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HOUSE OF REPRESENTATIVES
REPORT
104–193

FINANCIAL INSTITUTIONS REGULATORY RELIEF ACT OF 1995

JULY 18, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. LEACH, from the Committee on Banking and Financial Services, submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany H.R. 1858]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking and Financial Services, to whom was referred the bill (H.R. 1858) to reduce paperwork and additional regulatory burdens for depository institutions, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Institutions Regulatory Relief Act of 1995".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—REDUCTIONS IN GOVERNMENT OVERREGULATION

Subtitle A—The Home Mortgage Process

SEC. 101. REGULATORY AUTHORITY OVER DISCLOSURES AND ESCROW ACCOUNTS UNDER RESPA TRANSFERRED TO FEDERAL RESERVE BOARD.

(a) IN GENERAL.—Sections 4, 5, 6, and 10(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) are amended by striking "Secretary" each place such term appears and inserting "Board".

(b) CLARIFICATION OF PURPOSE.—Section 2(b)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601(b)(2)) is amended by inserting the following before the semicolon at the end: "without—

"(A) directly regulating settlement services prices; or

"(B) directly regulating wages to bona fide employees that are not designed as a subterfuge to facilitate kickbacks among affiliated companies".

(c) BOARD DEFINED.—Section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602) is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(9) the term 'Board' means the Board of Governors of the Federal Reserve System.".

(d) NEGOTIATED REGULATIONS UNDER SECTIONS 8 AND 9.—Section 8 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607) is amended by adding at the end the following new subsection:

"(e) NEGOTIATED REGULATIONS.—

"(1) IN GENERAL.—The Secretary may not publish a proposed or final regulation under this section and section 9 after the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995 unless the Secretary has used the negotiated rulemaking procedure established under subchapter III of chapter 5 of title 5, United States Code, to attempt to negotiate and develop the rule.

"(2) CONSISTENCY WITH PURPOSE.—Any regulation prescribed in accordance with paragraph (1) shall be consistent with the purposes of this title as set forth in section 2.".

(e) ADMINISTRATIVE ENFORCEMENT OF PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES.—Section 8 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607) is amended by adding after subsection (e) (as added by subsection (d) of this section) the following new subsection:

"(f) ADMINISTRATIVE ENFORCEMENT.—

"(1) IN GENERAL.—Compliance with the requirements of this section and sections 9 and 12 shall be enforced under this Act—

"(A) in the case of an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), by the appropriate Federal banking agency (as defined in such section);

"(B) in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act), by the National Credit Union Administration;

"(C) in the case of a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956) and any affiliate of any such holding company (other than an insured depository institution), by the Board;

"(D) in the case of a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act) and any affiliate of any such holding company (other than an insured depository institution), by the Director of the Office of Thrift Supervision; and

"(E) in the case of any other person, by the Secretary.

"(2) SPECIAL RULES RELATING TO DETERMINATION OF APPROPRIATE REGULATOR.—

"(A) CASES OF MORE THAN 1 APPROPRIATE REGULATOR.—If, under paragraph (1), a company may be regulated by more than 1 agency, the Board shall determine which agency shall be the responsible agency, notwithstanding paragraph (1).

"(B) CASES INVOLVING JOINT VENTURES, PARTNERSHIPS, AND OTHER AFFILIATED BUSINESS ARRANGEMENTS.—If any insured depository institution is involved in a joint venture, partnership, or other affiliated business arrangement with any person who is not an insured depository institution, the agency responsible for enforcing this section and sections 9 and 12 with respect to such insured depository institution shall be the agency with such responsibility with respect to such joint venture, partnership, or other affiliated business arrangement.

"(3) INTERAGENCY COOPERATION AND ENFORCEMENT GUIDELINES.—All the agencies referred to in any subparagraph of paragraph (1) shall cooperate with each other to develop enforcement guidelines and other means for achieving effective compliance with this section and sections 9 and 12.

"(4) PREFERENCE FOR CIVIL ENFORCEMENT OVER CRIMINAL ENFORCEMENT.—As part of the cooperative efforts required under paragraph (3), the agencies referred to in paragraph (1) shall consider means for achieving compliance with this section and section 9 through the exercise of administrative enforcement authority under this subsection without resorting to criminal enforcement actions under subsection (d) except in appropriate cases.

"(5) EFFECTIVE DATE.—Paragraphs (1) and (2) shall not take effect until joint interagency cooperation and enforcement guidelines are adopted by all the agencies to which paragraphs (1) and (2) apply and the enforcement authority of the Secretary with respect to this section and sections 9 and 12 shall continue until such paragraphs take effect.".

(f) INCREASED SCIENTER REQUIREMENT FOR CRIMINAL PENALTY.—Section 8(d) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607(d)) is amended—

(1) in paragraph (1), by inserting "willfully" after "persons who"; and

(2) in paragraph (3), by striking "was not intentional and".

(g) REDESIGNATION OF CONTROLLED BUSINESS ARRANGEMENTS AS AFFILIATED BUSINESS ARRANGEMENTS.—The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(1) in section 3(7), by striking "controlled business arrangement" and inserting "affiliated business arrangement"; and

(2) in subsections (c)(4) and (d)(6) of section 8, by striking "controlled business arrangements" and inserting "affiliated business arrangements".

(h) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 4(a) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2603(a)) is amended by striking "Federal Home Loan Bank Board" and inserting "Director of the Office of Thrift Supervision".

(2) Section 8(d)(4) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2607(d)(4)) is amended by inserting "any other agency described in subsection (f)(1)," after "the Secretary,".

(3) Section 10(c)(1)(C) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(c)(1)(C)) is amended by striking "Not later than the expiration of the 90-day period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the" and inserting "The".

(4) Section 16 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2614) is amended by striking "Secretary," and inserting "Board, an agency referred to in any subparagraph of section 8(f)(1),".

(5) Section 18 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2616) is amended—

(A) by striking "Secretary is authorized to" and inserting "Board and Secretary may jointly";

(B) by striking "Secretary" each place such term appears other than the 1st place and inserting "Board and Secretary"; and

(C) by striking "determines that such laws" and inserting "determine that such laws".

(6) Section 19(a) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617(a)) is amended to read as follows:

"(a) REGULATIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), the Secretary and the Board may prescribe such regulations, make such interpretations, and grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of this Act.

"(2) APPLICATION.—

"(A) BOARD.—The authority of the Board under paragraph (1) shall apply with respect to—

"(i) sections 4, 5, 6, 10, and 12; and

"(ii) sections 3, 7, 17, and 18 to the extent such sections are applicable with respect to the sections described in clause (i).

"(B) SECRETARY.—The authority of the Secretary under paragraph (1) shall apply with respect to—

"(i) sections 8 and 9; and

"(ii) sections 3, 7, 17, and 18 to the extent such sections are applicable with respect to the sections described in clause (i). ".

(7) Section 19(b) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617(b)) is amended by inserting ", the Board," after "the Secretary".

(8) Section 19(c) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617(c)) is amended—

(A) in paragraph (1)—

(i) by striking "Secretary" the 1st place such term appears and inserting "Board, with respect to any action to enforce section 4, 5, 6, or 10, and each agency referred to in any subparagraph of section 8(f)(1), with respect to any action to enforce section 8, 9, or 12,"; and

(ii) by striking "Secretary" each place such term appears other than the 1st place and inserting "Board or such other agency"; and

(B) in paragraph (2), by striking "Secretary" and inserting "Board or an agency referred to in any subparagraph of section 8(f)(1)".

(9) The heading for section 19 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617) is amended to read as follows:

"AUTHORITY OF THE SECRETARY AND THE FEDERAL RESERVE BOARD".

(i) REPEAL OF OBSOLETE PROVISIONS.—The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended by striking sections 13, 14, and 15.

SEC. 102. SIMPLIFICATION AND UNIFICATION OF DISCLOSURES REQUIRED UNDER RESPA AND TILA FOR MORTGAGE TRANSACTIONS.

(a) IN GENERAL.—With respect to credit transactions which are subject to the Real Estate Settlement Procedures Act of 1974 and the Truth in Lending Act, the Board of Governors of the Federal Reserve System shall take such action as may be necessary before the end of the 3-month period beginning on the date of the enactment of this Act—

(1) to simplify the disclosures applicable to such transactions under such Acts, including the timing of the disclosures; and

(2) to provide a single format for such disclosures which will satisfy the requirements of each such Act with respect to such transactions.

(b) REGULATIONS.—To the extent that it is necessary to prescribe any regulation in order to effect any changes required to be made under subsection (a), the proposed regulation shall be published in the Federal Register before the end of the 3-month period referred to in subsection (a).

(c) RECOMMENDATIONS FOR LEGISLATION.—If the Board of Governors of the Federal Reserve System finds that legislative action may be necessary or appropriate in order to simplify and unify the disclosure requirements under the Real Estate Settlement Procedures Act of 1974 and the Truth in Lending Act, the Board shall submit a report containing recommendations to the Congress concerning such action.

SEC. 103. INCREASED REGULATORY FLEXIBILITY UNDER THE TRUTH IN LENDING ACT.

(a) REGULATORY FLEXIBILITY.—Section 104 of the Truth in Lending Act (15 U.S.C. 1603) is amended by adding at the end the following new paragraph:

"(7) Transactions for which the Board, by regulation, determines that coverage under the Act is not needed to carry out the purposes of the Act.".

(b) EXEMPTIVE AUTHORITY.—Section 105 of the Truth in Lending Act (15 U.S.C. 1604) is amended—

(1) by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively; and

(2) by inserting after subsection (a) the following new subsection:

"(b) EXEMPTIVE AUTHORITY.—

"(1) IN GENERAL.—The Board shall exempt from all or parts of this title any class of transactions for which, in the Board's judgment, coverage under all or part of this title does not provide a measurable benefit to consumers in the form of useful information or protection.

"(2) FACTORS TO BE CONSIDERED.—In determining which classes of transactions to exempt in whole or in part, the Board shall consider, among other factors, the following:

"(A) The amount of the loan or closing costs and whether the disclosures, right of rescission, and other provisions are necessary, particularly for small loans.

"(B) Whether the requirements of this title complicate, hinder, or make more expensive the credit process for the class of transactions.

"(C) The status of the borrower, including, the borrowers' related financial arrangements, the financial sophistication of the borrower relative to the type of transaction, and the importance of the credit and related supporting property to the borrower.".

SEC. 104. REDUCTIONS IN RESPA REGULATORY BURDENS; CLARIFYING AMENDMENTS.

(a) UNNECESSARY DISCLOSURE.—Section 6(a) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended to read as follows:

"(a) DISCLOSURE TO APPLICANT RELATING TO ASSIGNMENT, SALE, OR TRANSFER OF LOAN SERVICING.—

"(1) IN GENERAL.—Each person who makes a federally related mortgage loan shall disclose to each person who applies for any such loan, at the time of application for the loan, whether the servicing of any such loan may be assigned, sold, or transferred to any other person at any time while such loan is outstanding.

"(2) SIGNATURE OF APPLICANT.—Any disclosure of the information required under paragraph (1) shall not be effective for purposes of this section unless the disclosure is accompanied by a written statement, in such form as the Secretary shall develop before the expiration of the 180-day period beginning on the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995, that the applicant has read and understood the disclosure and that is evidenced by the signature of the applicant at the place where such statement appears in the application.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 180 days after the date of the enactment of this Act.

(c) SECOND MORTGAGES.—Section 3(1)(A) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602(1)(A)) is amended by striking "or subordinate".

(d) CONSISTENCY OF RESPA AND TRUTH IN LENDING ACT EXEMPTION OF BUSINESS LOANS.—Section 7 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2606) is amended—

(1) by inserting "(a) IN GENERAL.—" before "This Act"; and

(2) by inserting at the end the following new subsection:

"(b) INTERPRETATION.—In issuing regulations pursuant to section 19(a) of this Act, the Board shall ensure that, with regard to subsection (a), the exemption for business credit includes all business credit which is exempt from the Truth in Lending Act in accordance with section 226.3(a) of the regulations prescribed by the Board known as 'regulation Z' (12 C.F.R. 226.3(a)), as in effect on the date of enactment of the Financial Institutions Regulatory Relief Act of 1995.".

SEC. 105. DISCLOSURES FOR ADJUSTABLE RATE MORTGAGES.

(a) IN GENERAL.—Section 127A(a)(2)(G) of the Truth in Lending Act (15 U.S.C. 1637a(a)(2)(G)) is amended by inserting before the semicolon ", or a statement that the monthly payment may increase or decrease significantly due to increases in the annual percentage rate".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 127A(b)(3) of the Truth in Lending Act (15 U.S.C. 1637a(b)(3)) is amended by striking "required under" and inserting "referred to in".

(c) ALTERNATIVE TO HISTORICAL EXAMPLE.—Section 128(a) of the Truth in Lending Act (15 U.S.C. 1638(a)) is amended by inserting at the end the following new paragraph:

"(14) In any variable rate transaction secured by the consumer's principal dwelling with a term greater than 1 year, at the creditors' option, a statement that the monthly payment may increase or decrease substantially, or a historical example illustrating the effects of interest rate changes implemented according to the loan program.".

(d) ENSURING HONORING OF LOCK-IN PROMISES.—Section 128(b) of the Truth in Lending Act (15 U.S.C. 1638(b)) is amended by adding at the end the following new paragraph:

"(3) In the case of a residential mortgage transaction, the disclosures under subsection (a) shall include the following:

"(A) The note rate and points, and a statement, if applicable, that these terms are subject to change.

"(B) A statement that the creditor must include the disclosed note rate and points in the credit agreement unless, in relation to either or both of those terms—

"(i) the disclosure clearly and conspicuously indicates that the term is subject to change, or

"(ii) in the case of any term to which clause (i) does not apply—

"(I) the creditor has clearly and conspicuously indicated that the term is conditioned on closing the transaction within a prescribed time;

"(II) the creditor has promptly and clearly communicated to the consumer the information and documentation that the consumer is required to provide to the creditor; and

"(III) the consumer has failed to provide such information and documentation within a reasonable time after receiving that communication.".

SEC. 106. CERTAIN CHARGES.

(a) THIRD PARTY FEES.—Section 106(a) of the Truth in Lending Act (15 U.S.C. 1605(a)) is amended by adding after the 2d sentence the following new sentence: "The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not expressly require the imposition of the charges or the services provided and does not retain the charges.".

(b) MORTGAGE BROKER FEES.—Section 106(a) of the Truth in Lending Act (15 U.S.C. 1605(a)) is amended by adding at the end the following new paragraph:

"(6) Mortgage broker fees.".

(c) TREATMENT OF CERTAIN DEBT CANCELLATION AND DEFICIENCY WAIVER CONTRACTS.—Section 106(c) of the Truth in Lending Act (15 U.S.C. 1605(c)) is amended to read as follows:

"(c) TREATMENT OF CERTAIN DEBT CANCELLATION AND DEFICIENCY WAIVER CONTRACTS.—Charges or premiums for any insurance or for any voluntary noninsurance product, written in connection with any consumer credit transaction, that provides protections against loss of or damage to property or against part or all of the debtor's liability for amounts in excess of the value of the collateral securing the debtor's obligation, or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance or product if obtained from or through the creditor, and stating that the person to whom credit is extended may choose the person through which the insurance or product is to be obtained.".

(d) TAXES ON SECURITY INSTRUMENTS OR EVIDENCES OF INDEBTEDNESS.—Section 106(d) of the Truth in Lending Act (15 U.S.C. 1605(d)) is amended by adding at the end the following new paragraph:

"(3) Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.".

(e) PREPARATION OF LOAN DOCUMENTS.—Section 106(e)(2) of the Truth in Lending Act (15 U.S.C. 1605(e)(2)) is amended to read as follows:

"(2) Fees for preparation of loan-related documents and for attending or conducting settlement.".

(f) FEES RELATING TO PEST INFESTATIONS, INSPECTIONS, AND HAZARDS.—Section 106(e)(5) of the Truth in Lending Act (15 U.S.C. 1605(e)(5)) is amended by inserting ", including fees related to pest infestations, premises and structural inspections, and flood hazards" before the period.

(g) ENSURING FINANCE CHARGES REFLECT COST OF CREDIT.—

(1) REPORT.—

(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall submit to the Congress a report containing recommendations on any regulatory or statutory changes necessary—

(i) to ensure that finance charges imposed in connection with consumer credit transactions more accurately reflect the cost of providing credit; and

(ii) to address abusive refinancing practices engaged in solely for the purpose of avoiding rescission.

(B) REPORT REQUIREMENTS.—In preparing the report under this paragraph, the Board shall—

(i) consider the extent to which it is feasible to include in finance charges all charges payable directly or indirectly by the consumer to whom credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit (especially those charges excluded from finance charges under section 106 of the Truth in Lending Act as of the date of the enactment of this Act), excepting only those charges which are payable in a comparable cash transaction; and

(ii) consult with and consider the views of affected industries and consumer groups.

(2) REGULATIONS.—The Board of Governors of the Federal Reserve System shall prescribe any appropriate regulation in order to effect any change included in the report under paragraph (1), and shall publish the regulation in the Federal Register before the end of the 1-year period beginning on the date of enactment of this Act.

SEC. 107. EXEMPTIONS FROM RESCISSION.

(a) CERTAIN REFINANCING.—Section 125(e) of the Truth in Lending Act (15 U.S.C. 1635(e)) is amended—

(1) by striking "or" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(5) a transaction, other than a mortgage referred to in section 103(aa), which—

"(A) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in section 103(w), or is any subsequent refinancing of such a transaction; and

"(B) does not provide any new consolidation or new advance.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 125(e)(2) of the Truth in Lending Act (15 U.S.C. 1635(e)(2)) is amended by inserting ", other than a transaction described in subsection (e)(5)," after "a refinancing or consolidation (with no new advances)".

SEC. 108. TOLERANCES; BASIS OF DISCLOSURES.

(a) TOLERANCES FOR ACCURACY.—Section 106 of the Truth in Lending Act (15 U.S.C. 1605) is amended by adding at the end the following new subsection:

"(f) TOLERANCES FOR ACCURACY.—In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge—

"(1) except as provided in paragraph (2), shall be treated as being accurate for purposes of this title if the amount disclosed as the finance charge—

"(A) does not vary from the actual finance charge by more than an amount equal to ½ of the numerical tolerance corresponding to, and generated by, the tolerance provided by section 107(c) with respect to the annual percentage rate, but in no case may the tolerance under this paragraph be less than $25 or greater than $200; or

"(B) is greater than the amount required to be disclosed under this title; and

"(2) shall be treated as being accurate for purposes of section 125 if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 0.5 percent of the total amount of credit extended.".

(b) BASIS OF DISCLOSURE FOR PER DIEM INTEREST.—Section 121(c) of the Truth in Lending Act (15 U.S.C. 1631(c)) is amended by adding at the end the following new sentence: "In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of inter-

est shall be deemed to be accurate for purposes of this title if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.''.

SEC. 109. LIMITATION ON LIABILITY.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end the following new section:

''SEC. 139. CERTAIN LIMITATIONS ON LIABILITY.

''(a) LIMITATIONS ON LIABILITY.—For any consumer credit transaction subject to this title that is consummated before the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995, a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under this title for, and a consumer shall have no extended rescission rights under section 125(f) with respect to—

''(1) the creditor's treatment, for disclosure purposes, of—

''(A) taxes described in section 106(d)(3);

''(B) fees and amounts described in section 106(e) (2) and (5);

''(C) fees and amounts referred to in the 3rd sentence of section 106(a); or

''(D) mortgage broker fees referred to in section 106(a)(6);

''(2) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 125 if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Board or a comparable written notice; or

''(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed—

''(A) may be treated as accurate pursuant to section 106(f), or

''(B) is greater than the amount or percentage required to be disclosed under this title.

''(b) EXCEPTIONS.—Subsection (a) shall not apply to—

''(1) any individual action or counterclaim brought under this title which was filed before June 1, 1995;

''(2) any class action brought under this title for which a final order certifying a class was entered before January 1, 1995;

''(3) the named individual plaintiffs in any class action brought under this title which was filed before June 1, 1995; or

''(4) any consumer credit transaction with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 138 the following new item:

''139. Certain limitations on liability.''.

SEC. 110. LIMITATION ON RESCISSION LIABILITY.

Section 125 of the Truth in Lending Act (15 U.S.C. 1635) is further amended by adding at the end the following new subsection:

''(h) LIMITATION ON RESCISSION.—An obligor shall have no rescission rights arising from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Board, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor.''.

SEC. 111. CALCULATION OF DAMAGES.

Section 130(a)(2)(A) of the Truth in Lending Act (15 U.S.C. 1640(a)(2)(A)) is amended—

(1) by striking ''or (ii)'' and inserting ''(ii)''; and

(2) by inserting before the semicolon at the end the following: '', or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than $250 or greater than $2,500''.

SEC. 112. ASSIGNEE LIABILITY.

(a) VIOLATIONS APPARENT ON THE FACE OF TRANSACTION DOCUMENTS.—Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is amended by adding at the end the following new subsection:

''(e) LIABILITY OF ASSIGNEE FOR CONSUMER CREDIT TRANSACTIONS SECURED BY REAL PROPERTY.—

"(1) IN GENERAL.—Except as otherwise specifically provided in this title, any civil action against a creditor for a violation of this title, and any proceeding under section 108 against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if—

"(A) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this title; and

"(B) the assignment to the assignee was voluntary.

"(2) VIOLATION APPARENT ON THE FACE OF THE DISCLOSURE DESCRIBED.—For the purpose of this section, a violation is apparent on the face of the disclosure statement if—

"(A) the disclosure can be determined to be incomplete or inaccurate from the face of the disclosure statement, any itemization of the amount financed, or any other disclosure of disbursement; or

"(B) the disclosure statement does not use the terms or format required to be used by this title.".

(b) SERVICER NOT TREATED AS ASSIGNEE.—Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is amended by inserting after subsection (e) (as added by subsection (a) of this section) the following new subsection:

"(f) TREATMENT OF SERVICER.—

"(1) IN GENERAL.—A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is the owner of the obligation.

"(2) SERVICER NOT TREATED AS OWNER ON BASIS OF ASSIGNMENT FOR ADMINISTRATIVE CONVENIENCE.—A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

"(3) SERVICER DEFINED.—For purposes of this subsection, the term 'servicer' has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.".

SEC. 113. RESCISSION RIGHTS IN FORECLOSURE.

Section 125 of the Truth in Lending Act (15 U.S.C. 1635) is amended by inserting after subsection (h) (as added by section 110) the following new subsection:

"(i) RESCISSION RIGHTS IN FORECLOSURE.—

"(1) IN GENERAL.—Notwithstanding section 139, and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, upon an action of a creditor to execute foreclosure on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if—

"(A) a mortgage brokers fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

"(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Board or a comparable written notice, or was not properly completed by the creditor.

"(2) TOLERANCE FOR DISCLOSURES.—Notwithstanding section 106(f), and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights following an action by a creditor to foreclose on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than $35 or is greater than the amount required to be disclosed under this title.".

SEC. 114. RECOVERY OF FEES.

Section 125(b) of the Truth in Lending Act (15 U.S.C. 1635) is amended—

(1) in the 1st sentence, by inserting ", except any charge for an appraisal report or credit report" after "other charge"; and

(2) in the 2d sentence, by striking "otherwise" and inserting "as otherwise required under this subsection".

SEC. 115. HOME OWNERSHIP DEBT COUNSELING NOTIFICATION.

Section 106(c) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(c)) is amended by striking paragraph (5).

SEC. 116. HOME MORTGAGE DISCLOSURE ACT.

(a) Section 309 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2808) is amended—

(1) in the 2d sentence, by striking "$10,000,000" and inserting "$50,000,000"; and

(2) by inserting at the end the following new sentences: "The Board may also, by regulation, exempt from the provisions of this Act institutions specified in section 303(2)(A) which have total assets as of their last full fiscal year of $50,000,000 or greater where the burden of complying with this Act on such institutions outweighs the usefulness of the information required to be disclosed. The exemptions provided under this section shall not be applicable to an institution which the Board, by order, has found a reasonable basis to believe is not fulfilling its obligations to serve the housing needs of the communities and neighborhoods in which it located. An institution subject to such an order shall be required to comply with the requirements of this Act for loans made after the time that the order is issued at such time and for such period as the Board deems appropriate. The dollar amount in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.".

(b) Section 304 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803) is amended by adding at the end the following new subsection:

"(m) OPPORTUNITY TO REDUCE COMPLIANCE BURDEN.—

"(1) A depository institution shall be considered to have satisfied the public availability requirements of subsection (a) if such institution keeps the information required under that subsection at its home office and provides notice at the branch locations specified in such subsection that such information is available upon request from the home office of the institution. A home office of the depository institution receiving a request for such information pursuant to this subsection shall provide the information pertinent to the location of the branch in question within fifteen days of the receipt of the written request.

"(2) In complying with paragraph (1), a depository institution may provide the individual requesting such information, at the institution's choice, with—

"(A) a paper copy of the information requested; or

"(B) if acceptable to the individual, the information through a form of electronic medium, such as computer disc.".

SEC. 117. APPLICABILITY.

(a) IN GENERAL.—The amendments made by subsections (a), (d), (e), and (f) of section 106 and sections 108, 112, and 113 shall apply to all consumer credit transactions in existence or consummated on or after the date of enactment of this Act.

(b) EXCEPTION.—Notwithstanding subsection (a), in the case of—

(1) an individual action or a counterclaim referred to in section 139(b)(1) of the Truth in Lending Act, as amended by section 109(a) of this Act;

(2) a class action referred to in section 139(b)(2) of that Act;

(3) a claim of an individual as a named individual plaintiff in a class action referred to in section 139(b)(3) of that Act; or

(4) a claim relating to a consumer credit transaction referred to in section 139(b)(4) of that Act;

the Truth in Lending Act shall apply as in effect on the date of the consummation of the consumer credit transaction that is the subject of the individual action, counterclaim, class action, or claim, respectively.

Subtitle B—Community Reinvestment Act Amendments

SEC. 121. EXPRESSION OF CONGRESSIONAL INTENT.

Subsection (b) of section 802 of the Community Reinvestment Act of 1977 (12 U.S.C. 2901) is amended to read as follows:

"(b) It is the purpose of this title to require each appropriate Federal financial supervisory agency to use its authority, when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions. When examining financial institutions, a supervisory agency shall not impose additional burden, recordkeeping, or reporting upon such institutions.".

SEC. 122. COMMUNITY REINVESTMENT ACT EXEMPTION.

The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended by adding at the end the following new section:

"SEC. 809. EXAMINATION EXEMPTION.

"(a) IN GENERAL.—A regulated financial institution shall not be subject to the examination requirements of this title or any regulations issued under this section if the institution and any bank holding company which controls such institution have aggregate assets of not more than $100,000,000.

"(b) ANNUAL ADJUSTMENT.—The dollar amount in subsection (a) shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.".

SEC. 123. SELF-CERTIFICATION OF CRA COMPLIANCE.

Section 804 of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by adding at the end the following new subsection (c):

"(c) SELF-CERTIFICATION OF CRA COMPLIANCE.—

"(1) CERTIFICATION.—In lieu of being evaluated under section 806A and receiving a written evaluation under section 807, a qualifying financial institution may elect to self-certify to the appropriate Federal financial supervisory agency that such institution is in compliance with the goals of this title.

"(2) QUALIFYING INSTITUTION.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'qualifying institution' means a financial institution which—

"(i) has not more than $250 million in assets;

"(ii) has not been found to have engaged in a pattern or practice of illegal discrimination under the Fair Housing Act or the Equal Credit Opportunity Act for the preceding 5-year calendar period; and

"(iii) received rating under section 807(b)(2) of 'satisfactory' or 'outstanding' in the most recent evaluation of such institution under this title.

"(B) ANNUAL ADJUSTMENT.—The dollar amount in subparagraph (A) shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

"(3) PUBLIC NOTICE.—

"(A) IN GENERAL.—A qualifying institution shall maintain in every branch a public notice stating that—

"(i) the institution has self-certified that the institution is satisfactorily helping to meet the credit needs of its community;

"(ii) the institution maintains—

"(I) at the main office of such institution, a public file which contains a copy of the self-certification to the appropriate Federal financial supervisory agency; and

"(II) a map delineating the community served by the institution;

"(iii) a list of the types of credit and services that the institution provides to the community served by the institution;

"(iv) such other information that the institution believes demonstrates the institution's record of helping to meet the credit needs of its community; and

"(v) every public comment or letter to the institution (and any response by the institution) received within the previous 2-year period about the record of the institution of helping to meet the credit needs of its community.

"(B) PUBLIC FILE.—A qualifying institution shall maintain a public file containing the contents described in this paragraph at the institution's main office

"(4) RATING.—

"(A) IN GENERAL.—A qualifying institution shall be deemed to have a rating of a 'satisfactory record of meeting community credit needs' for the purposes of this section and section 806A(c).

"(B) PUBLICATION.—Each Federal financial supervisory agency shall publish in the Federal Register once each month a list of institutions that have self-certified during the previous month.

"(C) PUBLICATION CONSTITUTES DISCLOSURE.—Publication of the name of the institution in the Federal Register as having self-certified shall constitute disclosure of the rating of the institution to the public for purposes of sections 806A and 807.

"(5) REGULATORY REVIEW.—

"(A) ASSESSMENT.—During each examination for safety and soundness, a qualifying institution's supervisory agency shall, as part of the agency's review of the institution's loans, assess whether the institution's basis for its self-certification is reasonable based on the public notice and the information contained in the public file pursuant to paragraph (3).

"(B) EXAMINATION IF SELF-CERTIFICATION IS NOT REASONABLE.—If the agency determines that the institution's basis for the institution's self-certification is not reasonable, the agency shall schedule an examination of the institution for the purpose of assessing the institution's record of helping to meet the credit needs of its community.

"(C) REVOCATION OF SELF-CERTIFICATION.—If an assessment pursuant to subparagraph (B) results in a less than 'satisfactory' rating, the agency shall revoke the institution's self-certification and substitute a written evaluation as provided under section 807.

"(D) PERIOD OF INELIGIBILITY FOR SELF-CERTIFICATION.—An institution whose self-certification has been revoked may not self-certify pursuant to this subsection during the 5 years succeeding the year in which the self-certification is revoked.

"(E) SUBSEQUENT ELIGIBILITY.—After the end of the period of ineligibility described in subparagraph (D), an institution which meets the requirements for self-certification may elect to self-certify.

"(6) PROHIBITION ON ADDITIONAL REQUIREMENTS.—No appropriate Federal financial supervisory agency may impose any additional requirements, whether by regulation or otherwise, relating to the self-certification procedure under this subsection.".

SEC. 124. COMMUNITY INPUT AND CONCLUSIVE RATING.

(a) CONFORMING AMENDMENT.—Section 804(a) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by inserting "conducted in accordance with section 806A," after "financial institution,".

(b) COMMUNITY INPUT AND CONCLUSIVE RATING.—The Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) is amended by inserting after section 806 the following new section:

"SEC. 806A. COMMUNITY INPUT AND CONCLUSIVE RATING.

"(a) PUBLICATION OF EXAM SCHEDULE AND OPPORTUNITY FOR COMMENT.—

"(1) PUBLICATION OF NOTICE.—Each appropriate Federal financial supervisory agency shall—

"(A) publish in the Federal Register, 30 days before the beginning of a calendar quarter, a listing of institutions scheduled for evaluation for compliance with this title during such calendar quarter; and

"(B) provide opportunity for written comments from the community on the performance, under this title, of each institution scheduled for evaluation.

"(2) COMMENT PERIOD.—Written comments may not be submitted to an appropriate Federal financial supervisory agency pursuant to paragraph (1) after the end of the 30-day period beginning on the first day of the calendar quarter.

"(3) COPY OF COMMENTS.—The agency shall provide a copy of such comments to the institution.

"(b) EVALUATION.—The appropriate Federal financial supervisory agency shall—

"(1) evaluate the institution in accordance with the standards contained in section 804; and

"(2) prepare and publish a written evaluation of the institution as required under section 807.

"(c) RECONSIDERATION OF RATING.—

"(1) REQUEST FOR RECONSIDERATION.—A reconsideration of an institution's rating referred to in section 807(b)(1)(C), may be requested within 30 days of the rating's disclosure to the public.

"(2) PROCEDURES FOR REQUEST.—Any such request shall be made in writing and filed with the appropriate Federal financial supervisory agency, and may be filed by the institution or a member of the community.

"(3) BASIS FOR REQUEST.—Any request for reconsideration under this subsection shall be based on significant issues of a substantive nature which are relevant to the delineated community of the institution and, in the case of a request by a member of the community, shall be limited to issues previously raised in comments submitted pursuant to subsection (a).

"(4) COMPLETION OF REVIEW.—The appropriate Federal financial supervisory agency shall complete any requested reconsideration within 30 days of the filing of the request.

"(d) CONCLUSIVE RATING.—

"(1) IN GENERAL.—An institution's rating shall become conclusive on the later of—

"(A) 30 days after the rating is disclosed to the public; or

"(B) the completion of any requested reconsideration by the Federal financial supervisory agency.

"(2) RATING CONCLUSIVE OF MEETING COMMUNITY CREDIT NEEDS.—An institution's rating shall be the conclusive assessment of the institution's record of meeting the credit needs of its community for purposes of section 804 until the institution's next rating, developed pursuant to an examination, becomes conclusive.

"(3) SAFE HARBOR.—Institutions which have received a 'satisfactory' or 'outstanding' rating shall be deemed to have met the purposes of section 804.

"(4) RULE OF CONSTRUCTION.—Notwithstanding any other provision of law, no provision of this section shall be construed as granting a cause of action to any person.".

(c) OVERALL EVALUATION OF INSTITUTION.—Paragraph (2) of section 804(a) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(a)) is amended to read as follows:

"(2) take such record into account in the overall evaluation of the condition of the institution by the appropriate Federal financial supervisory agency.".

SEC. 125. SPECIAL PURPOSE FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—Section 804 of the Community Reinvestment Act of 1977 (12 U.S.C. 2903) is amended by inserting after subsection (c) (as added by section 123 of this title) the following new subsection:

"(d) SPECIAL PURPOSE INSTITUTIONS.—

"(1) IN GENERAL.—In conducting assessments pursuant to this section at any special purpose institution, the appropriate Federal financial supervisory agency shall—

"(A) consider the nature of business such institution is involved in; and

"(B) assess and take into account the record of the institution commensurate with the amount of deposits (as defined in section 3(1) of the Federal Deposit Insurance Act) received by such institution.

"(2) STANDARDS.—Each appropriate Federal financial supervisory agency shall develop standards under which special purpose institutions may be deemed to have complied with the requirements of this title which are consistent with the specific nature of such businesses.".

(b) SPECIAL PURPOSE INSTITUTION DEFINED.—Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended by adding at the end the following new paragraph:

"(5) SPECIAL PURPOSE INSTITUTIONS.—The term 'special purpose institution' means a financial institution that does not generally accept deposits from the public in amounts of less than $100,000, such as wholesale, credit card, and trust institutions.".

SEC. 126. INCREASED INCENTIVES FOR LENDING TO LOW- AND MODERATE-INCOME COMMUNITIES.

(a) IN GENERAL.—Section 804(b) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(b)) is amended to read as follows:

"(b) POSITIVE CONSIDERATION OF CERTAIN LOANS AND INVESTMENTS.—In assessing and taking into account the records of a regulated financial institution under subsection (a), the appropriate Federal financial supervisory agency shall—

"(1) consider as a positive factor, consistent with the safe and sound operation of the institution, the institution's investment in or loan to—

"(A) any minority depository institution or women's depository institution (as such terms are defined in section 808(b)) or any low-income credit union;

"(B) any joint venture or other entity or project which promotes the public welfare in any distressed community (as defined by such agency) whether

or not the distressed community is located in the local community in which the regulated financial institution is chartered to do business; and

"(C) targeted low- and moderate-income communities, including real property loans to such communities; and

"(2) consider equally with other factors capital investment, loan participation, and other ventures undertaken by the institution in cooperation with—

"(A) minority- and women-owned financial institutions and low-income credit unions to the extent that these activities help meet the credit needs of the local communities in which such institutions are chartered; and

"(B) community development corporations in extending credit and other financial services principally to low- and moderate-income persons and small businesses to the extent that such community development corporations help meet the credit needs of the local communities served by the majority-owned institution.".

(b) AMENDMENT TO DEFINITIONS.—Section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended by inserting after paragraph (5) (as added by section 125(b) of this subtitle) the following new paragraph:

"(6) STATE BANK SUPERVISOR.—The term 'State bank supervisor' has the same meaning as in section 3(r) of the Federal Deposit Insurance Act.".

(c) TECHNICAL CORRECTION.—The 1st of the 2 paragraphs designated as paragraph (2) of section 803 of the Community Reinvestment Act of 1977 (12 U.S.C. 2902) is amended to read as follows:

"(D) the Director of the Office of Thrift Supervision with respect to any savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and any savings and loan holding company (other than a company which is a bank holding company);".

SEC. 127. PROHIBITION ON ADDITIONAL REPORTING UNDER CRA.

Section 806 of the Community Reinvestment Act of 1977 (12 U.S.C. 2905) is amended to read as follows:

"SEC. 806. REGULATIONS.

"(a) IN GENERAL.—

"(1) PUBLICATION REQUIREMENT.—Regulations to carry out the purposes of this title shall be published by each appropriate Federal financial supervisory agency.

"(2) PROHIBITION ON ADDITIONAL RECORDKEEPING.—Regulations prescribed and policy statements, commentary, examiner guidance, or other supervisory material issued under this title shall not impose any additional recordkeeping on a financial institution.

"(3) PROHIBITION ON LOAN DATA COLLECTION.—No loan data may be required to be collected and reported by a financial institution and no such data may be made public by any Federal financial supervisory agency under this title.".

SEC. 128. TECHNICAL AMENDMENT.

Section 807(b)(1)(B) of the Community Reinvestment Act (12 U.S.C. 2906) is amended by striking "The information" and inserting "In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the information".

SEC. 129. DUPLICATIVE REPORTING.

Section 10(g) of the Federal Home Loan Bank Act (12 U.S.C. 1430(g)) is amended by adding at the end the following new paragraph (3):

"(3) SPECIAL RULE.—This subsection shall not apply to members receiving a grade of 'outstanding' or 'satisfactory' under section 807 of the Community Reinvestment Act of 1977.".

SEC. 130. CRA CONGRESSIONAL OVERSIGHT.

(a) SENSE OF CONGRESS RELATING TO AGGRESSIVE OVERSIGHT.—It is the sense of the Congress that the appropriate committees of the House of Representatives and the Senate should exercise aggressive oversight of the adoption and implementation of any regulation by any appropriate Federal financial supervisory agency under the Community Reinvestment Act of 1977 after the date of the enactment of this Act.

(b) AGENCY REPORTS REQUIRED.—

(1) IN GENERAL.—Each appropriate Federal financial supervisory agency shall submit a report to the Congress by December 31, 1996, and by December 31, 1997, on the implementation of all regulations prescribed by such agency under the Community Reinvestment Act of 1977 after the date of the enactment of this Act.

(2) REQUIREMENTS RELATING TO PREPARATION OF REPORTS.—In preparing each report required under paragraph (1), each appropriate Federal financial supervisory agency shall—

(A) solicit and include comments from regulated financial institutions with respect to the regulations which are the subject of the report; and

(B) include quantifiable measures of the cost savings achieved under the regulations which are the subject of the report and the effectiveness of such regulations in achieving the purposes of the Community Reinvestment Act of 1977.

(3) DEFINITIONS.—For purposes of this section, the terms "appropriate Federal financial supervisory agency" and "regulated financial institution" have the same meanings as in section 803 of the Community Reinvestment Act of 1977.

SEC. 131. CONSULTATION AMONG EXAMINERS.

Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following new subsection:

"(j) CONSULTATION AMONG EXAMINERS.—

"(1) IN GENERAL.—Each appropriate Federal banking agency shall take such action as may be necessary to ensure that examiners employed by the agency—

"(A) consult on examination activities with respect to any depository institution; and

"(B) achieve an agreement and resolve any inconsistencies on the recommendations to be given to such institution as a consequence of any examinations.

"(2) EXAMINER-IN-CHARGE.—Each agency shall consider appointing an examiner-in-charge with respect to a depository institution to ensure consultation on examination activities among all of the agency's examiners involved in examinations of such institution.".

SEC. 132. LIMITATION ON REGULATIONS.

Section 806 of the Community Reinvestment Act of 1977 (12 U.S.C. 2905) (as amended by section 127) is amended by adding at the end the following new subsections:

"(b) LIMITATION ON REGULATIONS.—No regulation may be prescribed under this title by any Federal agency which would—

"(1) require any regulated financial institution to—

"(A) make any loan or enter into any other agreement on the basis of any discriminatory criteria prohibited under any law of the United States; or

"(B) make any loan to, or enter into any other agreement with, any uncreditworthy person that would jeopardize the safety and soundness of such institution; or

"(2) prevent or hinder in any way a financial institution's full responsibility to provide credit to all segments of the community.

"(c) ENCOURAGE LOANS TO CREDITWORTHY BORROWERS.—Regulations prescribed under this title shall encourage regulated financial institutions to make loans and extend credit to all creditworthy persons, consistent with safety and soundness.".

Subtitle C—Consumer Banking Reforms

SEC. 141. TRUTH IN SAVINGS.

(a) PURPOSE.—Section 262 of the Truth in Savings Act (12 U.S.C. 4301) is amended to read as follows:

"SEC. 262. PURPOSE.

"It is the purpose of this subtitle to ensure that consumers can make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts by requiring that institutions offering interest-bearing accounts pay interest on the full amount of principal each day in a consumer deposit account at the rate agreed to be paid by the institution.".

(b) PROHIBITION ON MISLEADING OR INACCURATE ADVERTISEMENTS AND DISCLOSURES.—Section 263 is amended to read as follows:

"SEC. 263. PROHIBITION ON MISLEADING OR INACCURATE ADVERTISEMENTS AND DISCLOSURES.

"No depository institution or deposit broker shall make any advertisement, announcement, solicitation or disclosure relating to a deposit account that is inaccurate or misleading, including any inaccurate or misleading description of a free or no-cost account, or that misrepresents its deposit contracts.".

(c) ACCOUNT INFORMATION UPON OPENING AN ACCOUNT.—Section 264 of the Truth in Savings Act (12 U.S.C. 4304) is amended to read as follows:

"SEC. 264. ACCOUNT INFORMATION.

"(a) IN GENERAL.—Each depository institution shall disclose fees, charges, penalties, and interest rates applicable to each class of accounts offered by the institution in accordance with this section.

"(b) INFORMATION ON FEES AND CHARGES.—Each depository institution shall disclose the following information with respect to any account to a consumer at the time the account is opened, or at such earlier time as a consumer may request (and no additional information may be required to be disclosed under this subtitle by regulation or otherwise with respect to such account):

"(1) A description of all fees, periodic service charges, penalties, and interest rates which may be charged or assessed against the account (or against the account holders in connection with such account), the amount of any such fees, charges, or penalties (or the method by which such amount will be calculated), and the conditions under which any such amount will be assessed.

"(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each such minimum balance is calculated.

"(3) Any minimum amount required with respect to the initial deposit in order to open the account.

"(c) INFORMATION ON INTEREST RATES.—The disclosures required under subsections (a) and (b) with respect to any account shall include the following information:

"(1) Any annual rate of simple interest.

"(2) The frequency with which interest will be compounded and credited.

"(d) NO REGULATIONS AUTHORIZED.—No regulations may be prescribed with respect to this section by the Board or any agency referred to in this title, including any regulation to define any terms used in this section.".

(d) DISCLOSURE OF CHANGE IN TERMS.—Section 265 of the Truth in Savings Act (12 U.S.C. 4304) is amended to read as follows:

"SEC. 265. DISCLOSURE OF CHANGE IN TERMS.

"If any change is made in any item required to be disclosed under section 264, all account holders who may be affected by such change shall be notified by mail and provided with a description of such change at least 30 days before the effective date of the change.".

(e) REPEAL OF SECTIONS.—Sections 266, 268, 271, and 273 of the Truth in Savings Act (12 U.S.C. 4304, 4305, 4307, 4310, and 4312, respectively) are hereby repealed.

(f) REDESIGNATION OF SECTIONS.—Section 267, 270, 272 of the Truth in Savings Act (12 U.S.C. 4306, 4309, and 4311) are redesignated as sections 266, 268, and 269, respectively.

(g) REDESIGNATION AND AMENDMENT OF SECTION 269.—Section 269 of the Truth in Savings Act (12 U.S.C. 4308) (as determined before the redesignation made by subsection (f) of this section) is amended to read as follows:

"SEC. 267. REGULATIONS.

"(a) IN GENERAL.—The Board, after consultation with each agency referred to in section 268(a) and public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this subtitle.

"(b) EFFECTIVE DATE OF REGULATIONS.—The provisions of this subtitle shall not apply with respect to any depository institution before the effective date of regulations prescribed by the Board under this subsection."

(h) REDESIGNATION AND AMENDMENT OF SECTION 274.—Section 274 of the Truth in Savings Act (12 U.S.C. 4313) is amended to read as follows:

"SEC. 270. DEFINITIONS.

"For the purposes of this subtitle, the following definitions shall apply:

"(1) ACCOUNTS.—The term 'account' means any account intended for use by and generally used by a consumer primarily for personal, family, or household purposes that is offered by a depository institution.

"(2) DEPOSIT BROKER.—The term 'deposit broker'—

"(A) has the meaning given to such term in section 29(f)(1) of the Federal Deposit Insurance Act; and

"(B) includes any person who solicits any amount from any other person for deposit in an insured depository institution.

"(3) DEPOSITORY INSTITUTION.—The term 'depository institution'—

"(A) means an institution described in clause (i), (ii), (iii), (iv), (v), or (vi) of section 19(b)(1)(A) of the Federal Reserve Act; and

"(B) does not include nonautomated credit unions which were not required to comply with the requirements of this title as of the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995 pursuant to the determination of the National Credit Union Administration Board.

"(4) INTEREST.—The term 'interest' includes dividends paid with respect to share accounts which are accounts within the meaning of paragraph (1).

"(5) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.".

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the effective date of regulations prescribed by the Board of Governors of the Federal Reserve System to implement such amendments.

(2) AUTHORITY TO ISSUE REGULATIONS.—Notwithstanding paragraph (1), the Board of Governors of the Federal Reserve System shall prescribe regulations in accordance with the amendment made by subsection (g).

(3) CONTINUED APPLICABILITY OF PROVISIONS UNTIL EFFECTIVE DATE OF NEW REGULATIONS.—The Truth in Savings Act, as in effect on the day before the date of the enactment of this Act, shall continue to apply on and after such date until the effective date of the amendments to such Act under this section.

SEC. 142. INFORMATION SHARING.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

"(s) CUSTOMER ACCESS TO PRODUCTS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, any depository institution, or any affiliate or subsidiary of any depository institution, may share or exchange information or otherwise transfer information between or among themselves without any restriction or limitation if it is clearly and conspicuously disclosed that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons.

"(2) DEFINITION.—For purposes of this subsection, the term 'information' means any and all data, records, or other information and material obtained or maintained by any depository institution or any affiliate or subsidiary thereof in the ordinary course of its business that relates in any way to a person (as such term is defined in section 603(b) of the Fair Credit Reporting Act) who applies for, maintains, or has maintained an account or credit relationship with or applied for, purchased or obtained other products or services from any depository institution or any affiliate or subsidiary of any depository institution, regardless of the source or manner in which the information is obtained or furnished.

"(3) RULE OF CONSTRUCTION.—Any depository institution, or any affiliate or subsidiary of any depository institution, relying on this subsection shall not be deemed to be a consumer reporting agency, user, or third party, and the information itself shall not constitute a consumer report, within the meaning of the Fair Credit Reporting Act or other similar law.".

SEC. 143. ELECTRONIC FUND TRANSFER ACT CLARIFICATION.

(a) DEFINITION OF ACCEPTED CARD OR OTHER MEANS OF ACCESS.—Section 903(1) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(1)) is amended by inserting before the semicolon at the end the following: ", but such term does not include a card, device, or computer that a person may use to pay for transactions through use of value stored on, or assigned to, the card, device, or computer itself, except for those transactions where such card, device, or computer is actually used to access an account to effect such transaction".

(b) DEFINITION OF ACCOUNT.—Section 903(2) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(2)) is amended by inserting before the semicolon at the end the following: "and does not include any value which is stored on, or assigned to, a card, device, or computer itself that enables a person to pay for transactions through use of that stored value".

SEC. 144. LIMIT ON RESTITUTION FOR TRUTH IN LENDING VIOLATIONS IF SAFETY AND SOUNDNESS OF VIOLATOR WOULD BE AFFECTED.

Section 108(e)(3)(A) of the Truth in Lending Act (15 U.S.C. 1607(e)(3)(A)) is amended—

(1) by striking "in any such case, the agency may require" and inserting "in any such case, the agency may (i) require";

(2) by striking ", except that with respect to any transaction consummated after the effective date of section 608 of the Truth in Lending Simplification and Reform Act, the agency shall" and inserting "; or (ii)"; and

(3) by striking "reasonable," and inserting "reasonable if, in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a), the agency determines that a partial adjustment or the making of partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized (as determined in accordance with regulations prescribed by such agency under section 38 of the Federal Deposit Insurance Act);".

Subtitle D—Equal Credit Opportunity Act Amendments

SEC. 151. SHORT TITLE.

This subtitle may be cited as the "Equal Credit Opportunity Act Amendments of 1995".

SEC. 152. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that both the Equal Credit Opportunity Act (15 U.S.C. 1691, et seq.) and the Fair Credit Reporting Act (15 U.S.C. 1681, et seq.) contain requirements that applicants for consumer credit be given certain information in the event that adverse action is taken on the application. These requirements differ in both scope and content and for that reason are confusing to both the consumer who receives the information and the party required to furnish the information.

(b) PURPOSE.—It is the purpose of this subtitle to combine and simplify the adverse action notification requirements of the Equal Credit Opportunity Act and the Fair Credit Reporting Act regarding applications for consumer credit and to make the information that is required to be furnished more understandable.

SEC. 153. EQUAL CREDIT OPPORTUNITY ACT AMENDMENTS.

(a) NOTICE OF ADVERSE ACTION.—Section 701(d)(2)(B) of the Equal Credit Opportunity Act (15 U.S.C. 1691(d)(2)(B)) is amended to read as follows:

"(B) giving written notification of adverse action which discloses—

"(i) the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days after such notification;

"(ii) if credit is denied or the charge for such credit is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency—

"(I) that fact and the name, address, and telephone number of the consumer reporting agency making the report;

"(II) the consumer's right to obtain, under section 612, a free copy of a consumer report on the consumer, from the consumer reporting agency referred to in subclause (I) within the 30-day period provided under such section; and

"(III) the consumer's right to dispute, under section 611, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

"(iii) if credit is denied or the charge for credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living, that fact and the right to receive disclosure of the nature of the information so received, within a reasonable period of time, upon the consumer's written request for information within 60 days after learning of such adverse action; and

"(v) the identity of the person or office from which such notification may be obtained.

Such statement of reasons may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 701(d)(3) of the Equal Credit Opportunity Act (15 U.S.C. 1691(d)(3)) is amended by striking the period at the end and adding the following: "and, to the extent applicable, the name, address, and telephone number of the consumer reporting agency identified in accordance

with the requirements of subsection (d)(3)(ii) and a statement of the right to obtain disclosure of the nature of the information upon which adverse action was taken as required by such subsection.''.

(c) REASONABLE PROCEDURES TO ASSURE COMPLIANCE.—Section 706 of the Equal Credit Opportunity Act (15 U.S.C. 1691e) is amended by adding at the end the following new subsection:

''(l) REASONABLE PROCEDURES TO ASSURE COMPLIANCE.—No person shall be held liable for any violation of subsection 701(d) if such person shows by a preponderance of the evidence that at the time of the alleged violation the person maintained reasonable procedures to assure compliance with the provisions of the subsection.''.

SEC. 154. FAIR CREDIT REPORTING ACT AMENDMENTS.

(a) Section 615(a) of the Fair Credit Reporting Act (15 U.S.C. 1681m(a)) is amended by striking ''credit or'' each place such term appears.

(b) Section 615 of the Fair Credit Reporting Act (15 U.S.C. 1681m) is amended by striking subsection (b) and redesignating subsection (c) as subsection (b).

(c) Section 615(b) (as redesignated by this section) of the Fair Credit Reporting Act (15 U.S.C. 1681m(b)) is amended by striking ''subsections (a) and (b)'' and inserting ''subsection (a)''.

SEC. 155. INCENTIVES FOR SELF-TESTING.

(a) EQUAL CREDIT OPPORTUNITY.—

(1) IN GENERAL.—The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended by inserting after section 704 the following new section:

''SEC. 704A. INCENTIVES FOR SELF-TESTING AND SELF-CORRECTION.

''(a) IN GENERAL.—If a creditor—

''(1) conducts, or authorizes an independent third party to conduct, a self-test of the creditor's lending or any part of the creditor's lending operations in order to determine the level or effectiveness of compliance with this title by the creditor; and

''(2) has identified discriminatory practices and has taken or is taking appropriate corrective actions to address the discrimination,

any report or results of such a self-test may not be obtained or used by any applicant, department, or agency in any proceeding or civil action brought under this title.

''(b) RESULTS OF SELF-TESTING.—No provision of this section shall be construed as preventing an applicant, department, or agency from obtaining and using the results of any self-testing in any proceeding or civil action brought under this title if—

''(1) the creditor or any other entity conducted such activity at the request of a department or agency;

''(2) the creditor or any other entity, or any person acting on behalf of the creditor or other entity—

''(A) voluntarily releases or discloses all, or any part of, such results; or

''(B) refers to or describes such results as a defense to charges of unlawful discrimination against such creditor, person, or entity; or

''(3) the results are sought by the applicant, department, or agency by means of a discovery request for the purposes of determining an appropriate penalty or remedy for a violation of this title.

''(c) REGULATIONS.—The appropriate Federal department or agency shall prescribe regulations, after notice and opportunity for comment, which determine what types of 'self-tests' are sufficiently extensive so as to constitute a determination of the level or effectiveness of a creditor's compliance with this title.''.

(2) REFERRALS TO THE ATTORNEY GENERAL.—Section 706(g) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(g)) is amended—

(A) by striking ''(g) The agencies'' and inserting ''(g) REFERRALS TO THE ATTORNEY GENERAL.—

''(1) IN GENERAL.—The agencies''; and

(B) by adding at the end the following new paragraphs:

''(2) LIMITATION ON REFERRALS OF SELF-TESTING RESULTS.—

''(A) IN GENERAL.—No agency shall be required to refer any report or results of a self-test relating to any creditor to the Attorney General if the creditor—

''(i) has already identified discriminatory practices as the result of self-testing instituted by the creditor to determine compliance with this title; and

''(ii) has taken or is taking appropriate corrective actions to address the discrimination.

"(3) ENFORCEMENT UNDER OTHER LAWS.—No provision of this section shall be construed as limiting the authority of the agency to enforce the provisions of this title under any other provision of law.".

(3) REFERRALS TO HUD.—Section 706(k) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(k)) is amended by adding at the end the following: "No such agency shall be required to notify the Secretary of Housing and Urban Development or the applicant that the agency has reason to believe that a violation of this title or the Fair Housing Act occurred if the reason is based on a result of self-testing instituted by the creditor to determine compliance with this title, and the creditor has already identified the possible violation and has taken or is taking appropriate corrective actions to address the possible violation. No provisions of this section shall be construed as limiting the authority of the agency to enforce the provisions of this title under any other provision of law.".

(4) CLERICAL AMENDMENT.—The table of sections for title VII of the Consumer Credit Protection Act is amended by inserting after the item relating to section 704 the following new item:

"704A. Incentives for self-testing and self-correction.".

(b) FAIR HOUSING.—The Fair Housing Act (42 U.S.C. 3601 et seq.) is amended by inserting after section 814 the following new section:

"SEC. 814A. SELF-TESTING ENHANCEMENT.

"(a) IN GENERAL.—If any person—

"(1) conducts, or authorizes an independent third party to conduct, a self-test of that person's residential real estate related lending activities, or any part of such activities, in order to determine the level or effectiveness of compliance with this title by the person; and

"(2) has identified discriminatory practices and has taken or is taking appropriate corrective actions to address the discrimination,

any report or results of such a self-test may not be obtained or used by any aggrieved person, complainant, department, or agency in any proceeding or civil action brought under this title.

"(b) RESULTS OF SELF-TESTING.—No provision of this section shall be construed as preventing an aggrieved person, complainant, department, or agency from obtaining and using the results of any self-testing as described in subsection (a) in any proceeding or civil action brought under this title if—

"(1) the creditor or any other entity conducted such activity at the request of a department or agency;

"(2) the creditor or any other entity, or any person acting on behalf of the creditor or other entity—

"(A) voluntarily releases or discloses all, or any part of, such results; or

"(B) refers to or describes such results as a defense to charges of unlawful discrimination against such creditor, person, or entity; or

"(3) the results are sought by the aggrieved person, complainant, department, or agency by means of a discovery request for the purposes of determining an appropriate penalty or remedy for a violation of this title.

"(c) REGULATIONS.—The appropriate Federal department or agency shall prescribe regulations, after notice and opportunity for comment, which determine what types of 'self-tests' are sufficiently extensive so as to constitute a determination of the level or effectiveness of a creditor's compliance with this title.".

SEC. 156. CREDIT SCORING SYSTEMS.

Section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended by adding at the end the following new subsection:

"(f) CREDIT SCORING SYSTEM.—

"(1) IN GENERAL.—A creditor shall be deemed to be in compliance with subsection (a) with respect to any credit decision made by the creditor which is based solely on the use of an empirically derived, demonstrably and statistically sound, credit scoring system (as defined by the Board in regulations prescribed under this title) if such system—

"(A) does not utilize any category protected under subsection (a);

"(B) does not use as a factor in such system any criterion which is so directly associated with such a category as to be the functional equivalent of such a category; and

"(C) does not use as a factor in such system any criterion that has a disparate impact on a category protected under subsection (a) unless use of the criterion is justified by business necessity and there is no less discriminatory alternative available.

"(2) AGE AS A FACTOR.—No provision of this subsection shall be construed as precluding a creditor from using age as a factor in a credit scoring system under paragraph (1) to the extent otherwise permitted under this title.".

SEC. 157. CONSULTATION BY ATTORNEY GENERAL REQUIRED IN NONREFERRAL CASES.

(a) EQUAL CREDIT OPPORTUNITY.—Section 706(h) of the Equal Credit Opportunity Act (15 U.S.C. 1691e(h)) is amended by adding at the end the following new sentence: "Before bringing a civil action against any creditor described in paragraph (1), (2), or (3) of section 704(a), the Attorney General shall consult with the appropriate agency under such paragraph.".

(b) FAIR HOUSING ACT.—Section 814(a) of the Fair Housing Act (42 U.S.C. 3614(a)) is amended by adding at the end the following new sentence: "Before bringing a civil action under the preceding sentence against any person or group of persons described in paragraph (1), (2), or (3) of section 704(a) of the Equal Credit Opportunity Act with respect to a violation of 805(a) of this title, the Attorney General shall consult with the appropriate agency under such paragraph.".

SEC. 158. EFFECTIVE DATE.

(a) IN GENERAL.—Except with respect to the requirements of subsection (b), this Act shall take effect at the end of the 270-day period beginning on the date of the enactment of this Act.

(b) IMPLEMENTING REGULATIONS.—The Board of Governors of the Federal Reserve System shall prescribe regulations to implement this Act and such regulations shall be published in final form before the end of the 180-day period beginning on the date of the enactment of this Act.

Subtitle E—Consumer Leasing Act Amendments

SEC. 161. SHORT TITLE.

This subtitle may be cited as the "Consumer Leasing Act Amendments of 1995".

SEC. 162. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) Competition among the various financial institutions and other firms engaged in the business of consumer leasing is greatest when there is informed use of leasing. The informed use of leasing results from an awareness of the cost of leasing by consumers.

(2) There has been a continued trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that leasing product advances have occurred such that lessors have been unable to provide consistent industry-wide disclosures to fully account for the competitive progress that has occurred.

(b) PURPOSES.—

(1) It is the purpose of this subtitle to assure a simple, meaningful disclosure of leasing terms so that the consumer will be able to compare more readily the various leasing terms available to the consumer and avoid the uninformed use of leasing, and to protect the consumer against inaccurate and unfair leasing practices.

(2) To provide for adequate cost disclosures that reflect the marketplace without impairing competition and the development of new leasing products, it is the purpose of this subtitle to provide the Board with the regulatory authority to assure a simplified, meaningful definition and disclosure of the terms of certain leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to the lessee, enable comparison of lease terms with credit terms where appropriate and to assure meaningful and accurate disclosures of lease terms in advertisements.

SEC. 163. REGULATIONS.

(a) IN GENERAL.—Chapter 5 of title I of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following new section:

"SEC. 187. REGULATIONS.

"(a) REGULATIONS AUTHORIZED.—

"(1) IN GENERAL.—The Board shall write regulations or staff commentary, if appropriate, to update and clarify the requirements and definitions for lease disclosures, contracts, and any other specific issues related to consumer leasing which would carry out the purposes of this chapter, to prevent any circumven-

tion of the chapter, and to facilitate compliance with the requirements of the chapter.

"(2) CLASSIFICATIONS, ADJUSTMENTS.—The regulations prescribed under paragraph (1) may contain classifications and differentiations and may provide for adjustments and exceptions for any class of transaction.

"(b) MODEL DISCLOSURES.—The Board shall publish model disclosure forms and clauses to facilitate compliance with the disclosure requirements and to aid the consumer in understanding the transaction. In designing forms, the Board shall consider the use by lessors of data processing or similar automated equipment. Use of the models shall be optional. A lessor who properly uses the material aspects of the models shall be deemed to be in compliance with the disclosure requirements.

"(c) EFFECTIVE DATES.—

"(1) IN GENERAL.—Any regulation of the Board, or any amendment or interpretation of any regulation of the Board, that requires a disclosure different from the disclosures previously required shall have an effective date of the October 1 that follows the date of promulgation by at least 6 months.

"(2) LONGER PERIOD.—The Board may, in the Board's discretion, lengthen the period of time referred to in paragraph (1) to permit lessors to adjust their forms to accommodate new requirements.

"(3) SHORTER PERIOD.—The Board may also shorten the period of time referred to in paragraph (1) if the Board makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices.

"(4) COMPLIANCE BEFORE EFFECTIVE DATE.—Lessors may comply with any newly promulgated disclosure requirement before the effective date of such requirement.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 5 of title I of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by inserting after the item relating to section 186 the following new item:

"187. Regulations.".

SEC. 164. CONSUMER LEASE ADVERTISING.

Section 184 of the Consumer Credit Protection Act (15 U.S.C. 1667c) is amended to read as follows:

"SEC. 184. CONSUMER LEASE ADVERTISING.

"(a) IN GENERAL.—If an advertisement for a consumer lease states the amount of any payment or states that any or no initial payment is required, the advertisement must also clearly and conspicuously state the following terms, as applicable:

"(1) That the transaction advertised is a lease.

"(2) The total of initial payments required at or before consummation of the lease or delivery of the property, whichever is later.

"(3) That a security deposit is required.

"(4) The number, amounts, and timing of scheduled payments.

"(5) For a lease in which the consumer's liability at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

"(b) ADVERTISING MEDIUM NOT LIABLE.—Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.".

SEC. 165. STATUTORY PENALTIES.

Section 185(a) of the Consumer Credit Protection Act (15 U.S.C. 1667d(a)) is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, a creditor shall only have liability determined under section 130(a)(2) for failing to comply with the requirements of paragraph (2), (8), (9), or (10) of section 182 or for failing to comply with disclosure requirements under State law for any term which the Board has determined to be substantially the same in meaning under section 186 as any of the terms referred to in section 182.".

Subtitle F—Federal Home Loan Bank Amendments

SEC. 171. APPLICATION FOR MEMBERSHIP IN THE FHLB SYSTEM.

Section 4(b) of the Federal Home Loan Bank Act (12 U.S.C. 1424) is amended to read as follows:

"(b) MEMBERSHIP BASED ON CONVENIENCY.—An institution eligible to become a member of a Federal home loan bank under this section may become a member by submitting the institution's application for membership to the bank in the district where the applicant's principal place of business is located. An application for membership shall be approved by the bank if, in the judgment of the bank, the applicant meets the criteria for eligibility contained in this section. An institution eligible to become a member under this section may apply for membership in an adjoining district, if appropriate for the convenience of the institution and then only with the approval of the Board.".

SEC. 172. FEDERAL HOME LOAN BANK EXTERNAL AUDITORS.

Section 11(j) of the Federal Home Loan Bank Act (12 U.S.C. 1431(j)) is amended to read as follows:

"(j) AUDITS.—

"(1) Notwithstanding any other provision of law, audits by the Comptroller General of the United States of the financial transactions of a Federal home loan bank shall not be limited to periods during which Government capital has been invested in the bank. The provisions of section 9107(c)(2) and 9108(d)(1) of title 31, of such Code, shall not apply to any Federal home loan bank.

"(2) Notwithstanding any other provision of law, the Board shall not participate in the hiring of an external auditor by the banks; except, that the Board may establish requirements for external audit contracts and, that all 12 banks shall contract for an annual audit with a single provider.".

TITLE II—STREAMLINING GOVERNMENT REGULATIONS

Subtitle A—Regulatory Approval Issues

SEC. 201. STREAMLINED NONBANKING ACQUISITIONS BY WELL CAPITALIZED AND WELL MANAGED BANKING ORGANIZATIONS.

(a) NOTICE REQUIREMENTS.—Section 4(j) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j) is amended—

(1) in paragraph (1)(A), by striking "No" and inserting "Except as provided in paragraph (3), no"; and

(2) by adding at the end the following new paragraphs:

"(3) NO NOTICE REQUIRED FOR CERTAIN TRANSACTIONS.—No notice under paragraph (1) or subsections (c)(8) or (a)(2)(B) is required for a proposal by a bank holding company to engage in any activity or acquire the shares or assets of any company if the proposal qualifies under paragraph (4).

"(4) CRITERIA FOR STATUTORY APPROVAL.—A proposal qualifies under this paragraph if all of the following criteria are met:

"(A) FINANCIAL CRITERIA.—Both before and immediately after the proposed transaction—

"(i) the acquiring bank holding company is well capitalized;

"(ii) the lead insured depository institution of such holding company is well capitalized;

"(iii) well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company; and

"(iv) no insured depository institution controlled by such holding company is undercapitalized.

"(B) MANAGERIAL CRITERIA.—

"(i) WELL MANAGED.—At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

"(ii) LIMITATION ON POORLY MANAGED INSTITUTIONS.—Except with respect to insured depository institutions described in paragraph (6), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review.

"(C) ACTIVITIES PERMISSIBLE.—Following consummation of the proposal, the bank holding company engages directly or through a subsidiary solely in—

"(i) activities that are permissible under subsection (c)(8), as determined by the Board by regulation or order thereunder, subject to all of the restrictions, terms and conditions of such subsection and such regulation or order; and

"(ii) such other activities as are otherwise permissible under this section, subject to the restrictions, terms and conditions, including any prior notice or approval requirements, provided in this section.

"(D) SIZE OF ACQUISITION.—

"(i) ASSET SIZE.—The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk-weighted assets of the acquiring bank holding company; and

"(ii) CONSIDERATION.—The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

"(E) NOTICE NOT OTHERWISE WARRANTED.—For proposals described in paragraph (5)(B), the Board has not, before the conclusion of the period provided in paragraph (5)(B), advised the bank holding company that a notice under paragraph (1) is required.

"(F) COMPLIANCE CRITERION.—During the 12-month period ending on the date on which the bank holding company proposes to commence an activity or acquisition, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act, against the bank holding company or any depository institution subsidiary of the holding company and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.

"(5) NOTIFICATION.—

"(A) COMMENCEMENT OF ACTIVITIES APPROVED BY RULE.—A bank holding company that qualifies under paragraph (4) and that proposes to engage de novo, directly or through a subsidiary, in any activity that is permissible under subsection (c)(8), as determined by the Board by regulation, may commence that activity without prior notice to the Board and must provide written notification to the Board no later than ten business days after commencing the activity.

"(B) ACTIVITIES PERMITTED BY ORDER AND ACQUISITIONS.—

"(i) IN GENERAL.—At least 12 business days before commencing any activity pursuant to paragraph (3) (other than an activity described in subparagraph (A)) or acquiring shares or assets of any company pursuant to paragraph (3), the bank holding company shall provide written notice of the proposal to the Board, unless the Board determines that no notice or a shorter notice period is appropriate.

"(ii) DESCRIPTION OF ACTIVITIES AND TERMS.—A notification under this subparagraph shall include a description of the proposed activities and the terms of any proposed acquisition.

"(6) RECENTLY ACQUIRED INSTITUTIONS.—Insured depository institutions which have been acquired by a bank holding company during the 12-month period preceding the date on which the company proposes to commence an activity or acquisition pursuant to paragraph (3) may be excluded for purposes of paragraph (4)(B)(ii) if—

"(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

"(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company.

"(7) ADJUSTMENT OF PERCENTAGES.—The Board may, by regulation, adjust the percentages and the manner in which the percentages of insured depository institutions are calculated under paragraph (4)(B)(i), (4)(D), or paragraph (6)(B) if the Board determines that any such adjustment is consistent with safety and soundness and the purposes of this Act.".

(b) DEFINITIONS.—Section 2(o) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) CAPITAL TERMS.—

"(A) INSURED DEPOSITORY INSTITUTIONS.—With respect to insured depository institutions, the terms 'well-capitalized', 'adequately capitalized', and 'uncapitalized' have the meaning given those terms in section 38(b) of the Federal Deposit Insurance Act.

"(B) BANK HOLDING COMPANY.—

"(i) ADEQUATELY CAPITALIZED.—The term 'adequately capitalized' means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.

"(ii) WELL CAPITALIZED.—A bank holding company is 'well capitalized' if it meets the required capital levels for well capitalized bank holding companies established by the Board.

"(C) OTHER CAPITAL TERMS.—The terms 'Tier 1' and 'risk-weighted assets' have the meaning given those terms in the capital guidelines or regulations established by the Board for bank holding companies."; and

(2) by adding at the end the following new paragraphs:

"(8) LEAD INSURED DEPOSITORY INSTITUTIONS.—

"(A) IN GENERAL.—The term 'lead insured depository institution' means the largest insured depository institution controlled by the bank holding company at any time, based on a comparison of the average total risk-weighted assets controlled by each insured depository institution during the previous 12-month period.

"(B) BRANCH OR AGENCY.—For purposes of this paragraph and section 4(j)(4), the term 'insured depository institution' shall also include any branch or agency operated in the United States by a foreign bank.

"(9) WELL MANAGED.—The term 'well managed' means—

"(A) in the case of any company or depository institution which receives examinations, the achievement of—

"(i) a CAMEL composite rating of 1 or 2 (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of such company or institution; and

"(ii) at least a satisfactory rating for management, if such rating is given; or

"(B) in the case of a company or depository institution that has not received an examination rating, the existence and use of managerial resources which the Board determines are satisfactory.".

SEC. 202. STREAMLINED BANK ACQUISITIONS BY WELL CAPITALIZED AND WELL MANAGED BANKING ORGANIZATIONS.

Section 3 of the Bank Holding Company Act (12 U.S.C. 1842) is amended by adding at the end the following new subsection:

"(h) NO APPROVAL REQUIRED FOR CERTAIN TRANSACTIONS.—

"(1) IN GENERAL.—Notwithstanding paragraph (3) or (5) of subsection (a) and subject to paragraphs (5) and (6), an acquisition of shares by a registered bank holding company, or a merger or consolidation between registered bank holding companies, shall be deemed approved at the conclusion of the period specified in subparagraph (G) if all of the following conditions have been met:

"(A) FINANCIAL AND MANAGERIAL CRITERIA.—

"(i) WELL CAPITALIZED BANK HOLDING COMPANY.—Both at the time of and immediately after the proposed transaction, the acquiring bank holding company is well capitalized.

"(ii) WELL CAPITALIZED LEAD INSURED DEPOSITORY INSTITUTION.—Both at the time of and immediately after the proposed transaction, the lead insured depository institution of the acquiring bank holding company is well capitalized.

"(iii) CAPITAL OF OTHER INSURED DEPOSITORY INSTITUTIONS.—At the time of the transaction, well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the acquiring bank holding company.

"(iv) NO UNDERCAPITALIZED INSURED DEPOSITORY INSTITUTIONS.—At the time of the transaction, no insured depository institution controlled by the acquiring bank holding company is undercapitalized.

"(v) WELL MANAGED.—

"(I) IN GENERAL.—At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

"(II) NO POORLY MANAGED INSTITUTIONS.—Except with respect to insured depository institutions described in paragraph (2), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the

later of the institution's most recent examination or subsequent review.

"(B) NO UNSATISFACTORY CRA RATINGS.—Except with respect to insured depository institutions described in paragraph (3), no insured depository institution controlled by the acquiring bank holding company has received a 'needs to improve' or 'substantial noncompliance' composite rating as a result of the institution's most recent examination under the Community Reinvestment Act of 1977.

"(C) COMPETITIVE CRITERIA.—Consummation of the proposal complies with guidelines established by the Board by regulation, after consultation with the Attorney General, that identify proposals that are not likely to have a significantly adverse effect on competition in any relevant market.

"(D) SIZE OF ACQUISITION.—

"(i) ASSET SIZE.—The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk weighted assets of the acquiring bank holding company.

"(ii) CONSIDERATION.—The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

"(E) INTERSTATE ACQUISITIONS.—Board approval of the transaction is not prohibited under subsection (d).

"(F) COMPLIANCE CRITERION.—During the 12-month period ending on the date of the transaction, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act, against any bank holding company involved in the transaction or any depository institution subsidiary of any such holding company and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.

"(G) OTHER CONSIDERATIONS.—Board approval of the transaction is not prohibited under subsection (c)(3).

"(H) NOTIFICATION.—The acquiring bank holding company provides written notice of the transaction, including a description of the terms of the transaction, to the Board and the Attorney General, simultaneously, at least 15 business days (or such shorter period as permitted by the Board) before the transaction is consummated.

"(I) NO BOARD DISAPPROVAL.—Before the end of the 15-day period (or the shorter period) referred to in subparagraph (H), the Board has not required an application under subsection (a).

"(2) SPECIAL RULE RELATING TO THE REQUIREMENT FOR WELL MANAGED INSTITUTIONS.—Insured depository institutions which have been acquired by a bank holding company during the 12-month period preceding the date of the transaction may be excluded for purposes of paragraph (1)(A)(v)(II) if—

"(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

"(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the holding company.

"(3) SPECIAL RULE RELATING TO THE REQUIREMENT FOR COMMUNITY INVESTMENT.—Insured depository institutions acquired during the 12-month period preceding the date of the transaction may be excluded for purposes of paragraph (1)(B) if the bank holding company has developed a plan to restore the performance of the institution to at least a 'satisfactory' rating under the Community Reinvestment Act of 1977 which is acceptable to the appropriate Federal banking agency.

"(4) ADJUSTMENT OF PERCENTAGES.—The Board may by regulation adjust the percentages and the manner in which the percentages of insured depository institutions are calculated under subparagraph (A)(v)(I) or (D) of paragraph (1) or paragraph (2)(B) if the Board determines that such adjustment is consistent with safety and soundness and the purposes of this Act.

"(5) ADVICE OF ATTORNEY GENERAL.—The Attorney General shall advise the Board during the period referred to in paragraph (1)(H) in writing if any competitive concerns exist with respect to the transaction.

"(6) WAIVER OF POSTAPPROVAL WAITING PERIOD.—If the Attorney General advises the Board that no competitive concerns exist with respect to the transaction, the provisions of section 11(b) relating to a postapproval waiting shall not apply with respect to such transaction.".

SEC. 203. ELIMINATE FILING AND APPROVAL REQUIREMENTS FOR INSURED DEPOSITORY INSTITUTIONS ALREADY CONTROLLED BY THE SAME HOLDING COMPANY.

(a) BANK MERGER ACT.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by adding at the end the following new paragraph:

"(12) The provisions of this subsection shall not apply to any merger, consolidation, acquisition of assets or assumption of liabilities involving only insured depository institutions that are subsidiaries of the same depository institution holding company if—

"(A) the responsible agency would not be prohibited from approving the transaction under section 44, if applicable;

"(B) the acquiring, assuming, or resulting institution complies with all applicable provisions of section 44, if any, as if the merger, consolidation, or acquisition were approved under this subsection;

"(C) the acquiring, assuming, or resulting institution provides written notification of the transaction to the appropriate Federal banking agency for the institution at least 10 days prior to consummation of the transaction; and

"(D) after receiving such notice, the agency does not require the institution to submit an application with respect to such transaction and so notifies the institution.".

(b) NATIONAL BANK CONSOLIDATION AND MERGER ACT.—

(1) CONSOLIDATIONS.—Section 2 of the National Bank Consolidation and Merger Act (12 U.S.C. 215) is amended—

(A) in subsection (a), by adding at the end the following new sentence: "No approval by the Comptroller of the Currency is required under this subsection for a transaction which involves the consolidation of banks that, at the time of the consolidation, are all subsidiaries (as defined in section 3 of the Federal Deposit Insurance Act) of the same company."; and

(B) in subsection (b)—

(i) by striking ", and thereafter the consolidation shall be approved by the Comptroller"; and

(ii) by striking "when such consolidation is approved by the Comptroller".

(2) MERGERS.—Section 3 of the National Bank Consolidation and Merger Act (12 U.S.C. 215a) is amended—

(A) in subsection (a), by adding at the end the following new sentence: "No approval by the Comptroller of the Currency is required under this subsection for a transaction which involves the merger of banks that, at the time of the merger, are all subsidiaries (as defined in section 3 of the Federal Deposit Insurance Act) of the same company."; and

(B) in subsection (b)—

(i) by striking ", and thereafter the merger shall be approved by the Comptroller"; and

(ii) by striking "when such merger shall be approved by the Comptroller".

SEC. 204. ELIMINATE REDUNDANT APPROVAL REQUIREMENT FOR OAKAR TRANSACTIONS.

(a) IN GENERAL.—Section 5(d)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)) is amended—

(1) in subparagraph (A), by striking "with the prior written approval of the responsible agency under section 18(c)(2)";

(2) in subparagraph (E)—

(A) by striking clause (iv) and inserting the following new clause:

"(iv) A transaction shall not be authorized under this paragraph unless the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction.";

(B) by striking clauses (i) and (ii); and

(C) by redesignating clauses (iii) and (iv) (as amended by subparagraph (A) of this paragraph) as clauses (i) and (ii), respectively; and

(3) by striking subparagraph (G) and redesignating the subsequent subparagraphs accordingly.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 5156A(b)(1) of the Revised Statutes of the United States (12 U.S.C. 215c(b)(1)) is amended by striking "section 5(d)(3) of the Federal Deposit Insurance Act or".

(c) CLERICAL AMENDMENT.—The heading for section 5(d)(3)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1815(d)(3)(E)) is amended by striking "FOR APPROVAL, GENERALLY".

SEC. 205. ELIMINATION OF DUPLICATIVE REQUIREMENTS IMPOSED UPON BANK HOLDING COMPANIES AND OTHER REGULATORY RELIEF UNDER THE HOME OWNERS' LOAN ACT.

(a) EXEMPTION FOR BANK HOLDING COMPANIES.—Section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a) is amended by adding at the end the following new subsection:

"(t) EXEMPTION FOR BANK HOLDING COMPANIES.—This section shall not apply to a bank holding company that is subject to the Bank Holding Company Act of 1956 or any company controlled by such bank holding company (other than a savings association).".

(b) DEFINITION OF SAVINGS AND LOAN HOLDING COMPANY.—Section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(D)) is amended to read as follows:

"(D) SAVINGS AND LOAN HOLDING COMPANY.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'savings and loan holding company' means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company.

"(ii) EXCEPTION FOR BANK HOLDING COMPANY.—The term 'savings and loan holding company' does not include any company which is registered under, and subject to, the provisions of the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company.".

(c) AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF 1956.—Section 4(i) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(i)) is amended by adding at the end the following new paragraphs:

"(4) SOLICITATION OF VIEWS.—

"(A) NOTICE TO DIRECTOR.—Upon receiving any application or notice by a bank holding company to acquire directly or indirectly a savings association under subsection (c)(8), the Board shall solicit the Director's comments and recommendations with respect to such acquisition.

"(B) COMMENT PERIOD.—The comments and views of the Director under subparagraph (A) with respect to any acquisition subject to such subparagraph shall be transmitted to the Board within 30 days of the receipt by the Director of the notice relating to such acquisition (or such shorter period as the Board may specify if the Board advises the Director that an emergency exists which requires expeditious action).

"(5) EXAMINATION.—

"(A) SCOPE.—The Board shall consult with the Director, as appropriate, in establishing the scope of an examination by the Board of a bank holding company that controls directly or indirectly a savings association.

"(B) ACCESS TO INSPECTION REPORTS.—Upon the request of the Director, the Board shall furnish the Director with a copy of any inspection report, additional examination materials, or supervisory information relating to any bank holding company which directly or indirectly controls a savings association.

"(6) COORDINATION OF ENFORCEMENT EFFORTS.—The Board and the Director shall cooperate in any enforcement action against any bank holding company which controls a savings association, if the relevant conduct involves such association.

"(7) DIRECTOR DEFINED.—For purposes of this section, the term 'Director' means the Director of the Office of Thrift Supervision.".

(d) ALTERNATIVE TEST.—Section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)) is amended—

(1) in paragraph (1), by striking "(2) and (7)" and inserting "(2), (7), and (8)"; and

(2) by adding at the end the following new paragraph:

"(8) ALTERNATIVE TEST.—Any savings association which meets the requirements set forth in section 7701(a)(19)(C) of the Internal Revenue Code of 1986 shall be deemed to be a qualified thrift lender and any qualified thrift lender shall be deemed to meet the requirements of such section.".

SEC. 206. ELIMINATE REQUIREMENT THAT APPROVAL BE OBTAINED FOR DIVESTITURES.

Section 2(g) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)) is amended—

(1) by striking paragraph (3);

(2) by inserting "and" after the semicolon at the end of paragraph (1); and

(3) by striking "; and" at the end of paragraph (2) and inserting a period.

SEC. 207. ELIMINATE UNNECESSARY BRANCH APPLICATIONS.

(a) NATIONAL BANK BRANCH APPLICATIONS.—Section 5155(i) of the Revised Statutes (12 U.S.C. 36(i)) is amended—

(1) by striking "(i) No branch" and inserting "(i) RELOCATION.—

"(1) APPROVAL REQUIRED.—Except as provided in paragraph (2), no branch"; and

(2) by adding at the end the following new paragraphs:

"(2) NO APPROVAL REQUIRED FOR CERTAIN BRANCHES.—Notwithstanding this subsection or subsection (b) or (c), the consent and approval of the Comptroller of the Currency shall not be required for a national bank to establish and operate, or to retain and operate, a branch or seasonal agency if—

"(A) the bank is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act and regulations prescribed by the Comptroller of the Currency under such section);

"(B) the bank received a composite CAMEL rating of '1' or '2' under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination;

"(C) the bank did not receive a 'needs to improve' or 'substantial noncompliance' composite rating at its most recent examination under the Community Reinvestment Act of 1977; and

"(D) the Comptroller of the Currency is otherwise authorized to grant approval under this section to such bank to establish and operate, or to retain and operate, a branch or seasonal agency at the proposed location.

"(3) CERTAIN BRANCHES DEEMED TO HAVE APPROVED APPLICATIONS.—A branch or seasonal agency established by a national bank under paragraph (2) shall be deemed to have been established and operated pursuant to an application approved under this section.".

(b) STATE MEMBER BANK BRANCH APPLICATIONS.—The third undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 321) is amended by adding at the end the following: "Notwithstanding the preceding 2 sentences, the approval of the Board shall not be required for a State member bank to establish and operate a branch or seasonal agency if—

"(A) the State member bank is well-capitalized (as defined in section 38 of the Federal Deposit Insurance Act and regulations prescribed by the Board under such section);

"(B) the State member bank received a composite CAMEL rating of '1' or '2' under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system);

"(C) the State member bank did not receive a 'needs to improve' or 'substantial noncompliance' composite rating at its most recent examination under the Community Reinvestment Act of 1977; and

"(D) the Board is otherwise authorized to grant approval under this section to such State member bank to establish and operate a branch or seasonal agency at the proposed location.

A branch or seasonal agency established by a State member bank under the previous sentence shall be deemed to have been established and operated pursuant to an application approved under this section.".

(c) STATE NONMEMBER BANK BRANCH APPLICATIONS.—Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)) is amended by adding at the end the following new paragraphs:

"(5) APPLICATION EXEMPTION FOR CERTAIN BANKS.—Notwithstanding paragraph (1), the consent of the Corporation shall not be required for a State nonmember insured bank to establish and operate any domestic branch if—

"(A) the bank is well-capitalized (as defined in section 38 and regulations prescribed by the Corporation under such section);

"(B) the bank received a composite CAMEL rating of '1' or '2' under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination;

"(C) the bank did not receive a 'needs to improve' or 'substantial noncompliance' composite rating as result of the bank's most recent examination under the Community Reinvestment Act of 1977; and

"(D) the Corporation is otherwise authorized to give consent under this section to such bank to establish and operate a domestic branch at the proposed location.

"(6) APPROVAL GRANTED.—A branch established by a State member bank under paragraph (5) shall be deemed to have been established and operated pursuant to an application approved under this section.".

SEC. 208. ELIMINATE BRANCH APPLICATIONS AND REQUIREMENTS FOR ATMs AND SIMILAR FACILITIES.

(a) DEFINITION OF BRANCH UNDER NATIONAL BANK ACT.—Section 5155(j) of the Revised Statutes (12 U.S.C. 36(j)) is amended—

(1) by striking "(j) The term" and inserting "(j) BRANCH.—

"(1) IN GENERAL.—The term"; and

(2) by adding at the end the following new paragraph:

"(2) CERTAIN PROPRIETARY ATMS AND REMOTE SERVICING UNITS.—The term 'branch' does not include any automated teller machine or remote service unit which is owned and operated by a depository institution—

"(A) primarily for the benefit of the institution and the affiliates of the institution; and

"(B) which could operate a branch at the location of such machine or unit.".

(b) DEFINITION OF BRANCH UNDER FEDERAL DEPOSIT INSURANCE ACT.—Section 3(o) of the Federal Deposit Insurance Act (12 U.S.C. 1813(o)) is amended—

(1) by striking "(o) The term" and inserting "(o) DEFINITIONS RELATING TO BRANCHES.—

"(1) DOMESTIC BRANCH.—

"(A) IN GENERAL.—The term"; and

(2) by striking "lent; and the term" and inserting "lent.

"(B) CERTAIN PROPRIETARY ATMS AND REMOTE SERVICING UNITS.—The term 'domestic branch' does not include any automated teller machine or remote service unit which is owned and operated by a depository institution—

"(i) primarily for the benefit of the institution and the affiliates of the institution; and

"(ii) which could operate a branch at the location of such machine or unit.

"(2) FOREIGN BRANCH.—The term".

SEC. 209. ELIMINATE REQUIREMENT FOR APPROVAL OF INVESTMENTS IN BANK PREMISES FOR WELL CAPITALIZED AND WELL MANAGED BANKS.

Section 24A of the Federal Reserve Act (12 U.S.C. 371d) is amended by inserting before the period in that section the following: "or, in the case of a bank which received a composite CAMEL rating of '1' or '2' under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination and, both before and immediately following the investment or loan, is well capitalized (as defined under section 38 of the Federal Deposit Insurance Act), the amount which is equal to 150 percent of the capital stock and surplus of such bank".

SEC. 210. ELIMINATE UNNECESSARY FILING FOR OFFICER AND DIRECTOR APPOINTMENTS.

Section 32(d) of the Federal Deposit Insurance Act (12 U.S.C. 1831i(d)) is amended to read as follows:

"(d) ADDITIONAL INFORMATION.—

"(1) IN GENERAL.—Any notice submitted to an appropriate Federal banking agency with respect to an individual by any insured depository institution or depository institution holding company pursuant to subsection (a) shall include—

"(A) the information described in section 7(j)(6)(A) about the individual; and

"(B) such other information as the agency may prescribe by regulation.

"(2) WAIVER.—An appropriate Federal banking agency may waive the requirement of this section by regulation or on a case-by-case basis consistent with safety and soundness.".

SEC. 211. STREAMLINING PROCESS FOR DETERMINING NEW NONBANKING ACTIVITIES.

Section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) is amended—

(1) by striking "and opportunity for hearing"; and

(2) by striking "approval by the Board prior to January 1, 1971." and inserting the following: "approval by the Board prior to January 1, 1971, except that, after March 30, 1997, it shall be closely related to banking or managing or controlling banks and a proper incident thereto to provide insurance as a principal, agent, or broker in any State, in full compliance with the laws and regulations of such State that apply uniformly to each type of insurance license or authorization in that State, including laws that restrict a bank in that State from having an affiliate, agent, or employee in that State licensed to provide insurance

as principal, agent, or broker. The Board shall prescribe regulations concerning insurance affiliations that provide equivalent treatment for all stock and mutual fund insurance companies that control or are affiliated with a bank, and fully accommodate and are consistent with State law.''.

SEC. 212. DISPOSITION OF FORECLOSED ASSETS.

Section 4(c)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(2)) is amended—

(1) by striking ''for not more than one year at a time''; and

(2) by striking ''but no such extensions shall extend beyond a date five years'' and inserting ''and, in the case of a bank holding company which has not disposed of such shares within 5 years of the date such shares were acquired, the Board may, upon the application of such company, grant additional exemptions if, in the Board's judgment, such extension would not be detrimental to the public interest and either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period or the disposal of such shares during such 5-year period would have been detrimental to the company, but the aggregate duration of such extensions shall not extend 10 years''.

SEC. 213. INCREASE IN CERTAIN CREDIT UNION LOAN CEILINGS.

Section 107(5)(A) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)) is amended—

(1) in clause (iv), by striking ''$10,000'' and inserting ''$50,000''; and

(2) in clause (v), by striking ''$10,000'' and inserting ''$50,000''.

Subtitle B—Streamlining of Government Regulations; Miscellaneous Provisions

SEC. 221. ELIMINATE THE PER-BRANCH CAPITAL REQUIREMENT FOR NATIONAL BANKS AND STATE MEMBER BANKS.

Section 5155 of the Revised Statutes (12 U.S.C. 36) is amended—

(1) by striking subsection (h); and

(2) by redesignating subsections (i) (as amended by section 207(a) of this Act), (j) (as amended by section 208(a) of this Act), (k), and (l) as subsections (h), (i), (j), and (k), respectively.

SEC. 222. BRANCH CLOSURES.

(a) IN GENERAL.—Section 42 of the Federal Deposit Insurance Act (12 U.S.C. 1831r-1) is amended by adding at the end the following new subsection:

''(e) SCOPE OF APPLICATION.—

''(1) IN GENERAL.—This section shall not apply with respect to—

''(A) an automated teller machine;

''(B) a branch which—

''(i) has been acquired through merger, consolidation, purchase, assumption, or other method; and

''(ii) is located—

''(I) within 2.5 miles of another branch of the acquiring institution; or

''(II) within a neighborhood currently being served by another branch of the acquiring institution,

if such other branch of the acquiring institution is expected to continue to provide banking services to substantially all of the customers currently served by the branch acquired;

''(C) a branch which is closing and reopening at a location which is—

''(i) within 2.5 miles of the location of the branch being closed; or

''(ii) within the same neighborhood as the branch being closed,

if the branch at the new location is expected to continue to provide banking services to substantially all of the customers served by the branch at the former location;

''(D) a branch that is closed in connection with—

''(i) an emergency acquisition under—

''(I) section 11(n); or

''(II) subsections (f) or (k) of section 13; or

''(ii) any assistance provided by the Corporation under section 13(c); and

"(E) any other branch closure whose exemption from the notice requirements of this section would not produce a result inconsistent with the purposes of this section.

"(2) REGULATIONS.—The appropriate Federal banking agency shall, by regulation, determine the circumstances under which any exemption under paragraph(1)(E) may be granted.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply as if such amendment had been included in section 42 of the Federal Deposit Insurance Act as of the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991.

SEC. 223. AMENDMENTS TO THE DEPOSITORY INSTITUTIONS MANAGEMENT INTERLOCKS ACT.

(a) DUAL SERVICE IN SAME AREA, TOWN, OR VILLAGE.—Section 203 of the Depository Institution Management Interlocks Act (12 U.S.C. 3202) is amended—

(1) by inserting "(a) PROHIBITIONS.—" before "A management official"; and

(2) by adding after subsection (a) the following new subsection:

"(b) SMALL MARKET SHARE EXEMPTION.—

"(1) IN GENERAL.—This section shall not be construed as prohibiting a management official of a depository institution or depository holding company from serving as a management official of another depository institution or depository holding company not affiliated with such institution or holding company if the depository institutions or depository holding companies with which the management official serves hold, together with all the affiliates of such institutions or holding companies, in the aggregate no more that 20 percent of the deposits in each relevant geographic banking market where offices of the depository institutions or depository holding companies or their affiliates are located.

"(2) RELEVANT GEOGRAPHIC BANKING MARKET DEFINED.—For purposes of paragraph (1), the term 'relevant geographic banking market' means—

"(A) the area defined by the boundaries identified by the Board of Governors of the Federal Reserve System;

"(B) if the Board has not defined such boundaries, the area defined by the boundaries of the Ranally Metropolitan Area in which the office of the depository institution or the depository institution holding company is located; and

"(C) if the office of such institution or company is not located within a Ranally Metropolitan Area, the area defined by the county (or an equivalent area of general local government) in which such office is located.".

(b) DUAL SERVICE AMONG LARGER ORGANIZATIONS.—Section 204 of the Depository Institution Management Interlocks Act (12 U.S.C. 3203) is amended to read as follows:

"SEC. 204. DUAL SERVICE AMONG LARGER ORGANIZATIONS.

"(a) IN GENERAL.—If a depository institution, depository institution holding company, or depository institution affiliate of any such institution or company has total assets exceeding $2,500,000,000, a management official of such institution, company, or affiliate may not serve as a management official of any other depository institution, depository institution holding company, or depository institution affiliate of any such institution or company which—

"(1) is not an affiliate of the institution, company, or affiliate of which such person is a management official; and

"(2) has total assets exceeding $1,500,000,000.

"(b) CPI ADJUSTMENTS.—The dollar amounts in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.".

(c) EXTENSION OF GRANDFATHER EXEMPTION.—Section 206 of the Depository Institution Management Interlocks Act (12 U.S.C. 3205) is amended—

(1) in subsection (a), by striking "for a period of, subject to the requirements of subsection (c), 20 years after the date of enactment of this title";

(2) in subsection (b), by striking the 2d sentence; and

(3) by striking subsection (c).

(d) RULES OR REGULATIONS.—Section 209 of the Depository Institution Management Interlocks Act (12 U.S.C. 3207) is amended—

(1) by striking "(a) IN GENERAL.—Rules" and inserting "Rules";

(2) by inserting ", including rules or regulations which permit service by a management official which would otherwise be prohibited by section 203 or section 204," after "title"; and

(3) by striking subsections (b) and (c).

SEC. 224. ACCELERATION OF REPAYMENT TO TREASURY.

The Appraisal Subcommittee of the Financial Institutions Examination Council shall repay to the Secretary of the Treasury the funds specified in section 1108 of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by not later than September 30, 1998, and the Secretary shall deposit such funds in the general fund of the Treasury.

SEC. 225. ELIMINATE UNNECESSARY AND DUPLICATIVE RECORDKEEPING AND REPORTING REQUIREMENTS RELATING TO LOANS TO EXECUTIVE OFFICERS AND PERMIT PARTICIPATION IN EMPLOYEE BENEFIT PLANS.

(a) AMENDMENTS TO SECTION 22(h) OF THE FEDERAL RESERVE ACT.—

(1) EMPLOYEE BENEFIT PLANS.—Section 22(h)(2) of the Federal Reserve Act (12 U.S.C. 375b(2)) is amended—

(A) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively, and moving the left margins of such clauses 2 ems to the right;

(B) by striking "(2) PREFERENTIAL TERMS PROHIBITED.—A member bank" and inserting "(2) PREFERENTIAL TERMS PROHIBITED.—

"(A) IN GENERAL.—A member bank"; and

(C) by adding at the end the following new subparagraph:

"(B) EXCEPTION.—No provision of this paragraph shall be construed as prohibiting extensions of credit that constitute a benefit or compensation program that is widely available to and used by employees of the member bank, including employees who are not executive officers of the bank.".

(2) EXCEPTION FOR EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS AND DIRECTORS OF NONBANK AFFILIATES.—Section 22(h)(8)(B) of the Federal Reserve Act (12 U.S.C. 375b(8)(B)) is amended to read as follows:

"(B) EXCEPTION.—The Board may, by regulation, make exceptions to subparagraph (A) for an executive officer or director of a subsidiary of a company that controls the member bank if—

"(i) the executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank; and

"(ii) the assets of such subsidiary do not exceed 10 percent of the consolidated assets of a company that controls the member bank and such subsidiary (and is not controlled by any other company).".

(3) RECORDKEEPING REQUIREMENTS.—Section 22(h)(10) of the Federal Reserve Act (12 U.S.C. 375b(10)) is amended by adding at the end the following: "The Board shall specify by regulation the recordkeeping required of member banks to ensure compliance with this section.".

(b) REPORTING REQUIREMENTS.—

(1) UNNECESSARY REPORTS.—Section 22(g) of the Federal Reserve Act (12 U.S.C. 375a) is amended—

(A) by striking paragraphs (6) and (9); and

(B) by redesignating paragraphs (7), (8), and (10) as paragraphs (8), (9), and (10), respectively.

(2) UNNECESSARY REPORTS.—Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended by striking subsection (k).

(3) UNNECESSARY REPORTS REGARDING LOANS FROM CORRESPONDENT BANKS.—Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)) is amended—

(A) by striking subparagraph (G); and

(B) by redesignating subparagraphs (H) and (I) as subparagraphs (G) and (H), respectively.

(c) AMENDMENTS RELATING TO LOANS TO EXECUTIVE OFFICERS.—Section 22(g) of the Federal Reserve Act (12 U.S.C. 375a) (as amended by subsection (a) of this section) is amended—

(1) in paragraph (1)(D), by striking "of any one of the three categories respectively referred to in paragraphs (2), (3), and (4)" and inserting "of any category referred to in paragraph (2), (3), (4), (5), or (6)";

(2) by redesignating paragraphs (4) and (5) as paragraphs (6) and (7), respectively;

(3) by inserting after paragraph (3) the following new paragraph:

"(4) HOME EQUITY LINES OF CREDIT.—A member bank may make a revolving open-end extension of credit to any executive officer of the bank if the credit—

"(A) does not exceed $100,000; and

"(B) is secured by a dwelling that is owned by such officer and used by the officer as a residence.

"(5) LOANS SECURED BY MARKETABLE ASSETS.—A member bank may extend credit to any executive officer of the bank if the credit is secured by readily marketable assets of a value not exceeding such amount as the Board may establish by regulation."; and

(4) in paragraph (7) (as so redesignated by paragraph (2) of this subsection) by striking "(4)" each place such term appears and inserting "(6)".

SEC. 226. EXPANDED REGULATORY DISCRETION FOR SMALL BANK EXAMINATIONS.

(a) SMALL BANK SIZE DISCRETION.—Section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) is amended—

(1) by redesignating paragraph (9) as paragraph (10);

(2) by redesignating the 2d of the 2 paragraphs designated as paragraph (8) as paragraph (9); and

(3) in paragraph (9) (as so redesignated), by striking "$175,000,000" and inserting "$250,000,000".

(b) INFLATION ADJUSTMENT.—Section 10(d) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)) is amended by inserting after paragraph (10) (as so redesignated in subsection (a)(1) of this section) the following new paragraph:

"(11) ANNUAL CPI ADJUSTMENT.—The dollar amount in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.".

(c) COORDINATED FEDERAL AND STATE EXAMINATIONS.—The Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) shall submit semiannual reports to the Congress on the progress made by such agencies in implementing the requirements of section 10(d)(6) of the Federal Deposit Insurance Act until such agencies submit a final report that—

(1) the examination system provided for in such section is in place; and

(2) such system provides for full coordination of examinations of State depository institutions with State bank supervisors.

SEC. 227. COST REIMBURSEMENT.

Section 1115 of the Right to Financial Privacy Act (12 U.S.C. 3415) is amended by inserting "(including corporate customers)" after "pertaining to a customer".

SEC. 228. IDENTIFICATION OF FOREIGN NONBANK FINANCIAL INSTITUTION CUSTOMERS.

(a) IN GENERAL.—Section 5327(a)(1) of title 31, United States Code, is amended to read as follows:

"(1) is a financial institution (other than a foreign bank (as defined in section 101(b) of the International Banking Act of 1978)) which is a foreign person; and".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The heading for section 5327 of title 31, United States Code, is amended by inserting "foreign nonbank" after "of".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code, is amended by striking the item relating to section 5327 and inserting the following new item:

"5327. Identification of foreign nonbank financial institutions.".

SEC. 229. PAPERWORK REDUCTION REVIEW.

Not later than 180 days after the date of enactment of this Act, each appropriate Federal banking agency and the National Credit Union Administration, in consultation with insured depository institutions, insured credit unions, and other interested parties, shall—

(1) review the extent to which current regulations require insured depository institutions and insured credit unions to produce unnecessary internal written policies; and

(2) eliminate such requirements, where appropriate.

For purposes of this section, the terms "insured depository institution" and "appropriate Federal banking agency" have the same meanings as in section 3 of the Federal Deposit Insurance Act and the term "insured credit union" has the same meaning as in section 101(7) of the Federal Credit Union Act.

SEC. 230. DAILY CONFIRMATIONS FOR HOLD-IN-CUSTODY REPURCHASE TRANSACTIONS.

Before the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall revise the regulation under section 15C of the Securities Exchange Act of 1934 relating to the obligations of financial institutions and of brokers and dealer registered under such Act holding custody of securities subject to a repurchase agreement to confirm, daily and in writing, the securities that are subject to such repurchase agreement. Such revision shall permit the

counterparty to such agreement to waive in writing the right to obtain such daily written confirmation if the counterparty has received a clear and conspicuous disclosure before entering into any side agreement, in a form prescribed by the Secretary, that adequately informs the counterparty of the benefits of receiving such daily written confirmations.

SEC. 231. REQUIRED REGULATORY REVIEW OF REGULATIONS.

(a) IN GENERAL.—Not less frequently than once every 10 years, the Financial Institutions Examination Council (hereafter in this section referred to as the "Council") and each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) represented on the Council shall conduct a review of all regulations prescribed by the Council or by any such agency, respectively, in order to identify outdated or otherwise unnecessary regulatory requirements imposed upon insured depository institutions.

(b) PROCESS.—In conducting the review under subsection (a), the Council or the appropriate Federal banking agency shall—

(1) categorize the regulations by type (such as consumer regulations, safety and soundness regulations, or such other designations as determined by the Council); and

(2) at regular intervals, provide notice and solicit public comment on a particular category or categories of regulations, requesting commentators to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome.

(c) COMPLETE REVIEW.—The Council or the appropriate Federal banking agency shall ensure that the notice and comment period described in subsection (b)(2) is conducted with respect to all regulations described in subsection (a) not less frequently than once every 10 years.

(d) REGULATORY RESPONSE.—The Council or the appropriate Federal banking agency shall—

(1) publish in the Federal Register a summary of the comments received under this section, identifying significant issues raised and providing comment on such issues; and

(2) eliminate unnecessary regulations to the extent that such action is appropriate.

(e) REPORT TO CONGRESS.—Not later than 30 days after carrying out subsection (d)(1), the Council shall provide to the Congress a report, which shall include—

(1) a summary of any significant issues raised by public comments received by the Council and the appropriate Federal banking agencies under this section and the relative merits of such issues; and

(2) an analysis of whether the appropriate Federal banking agency involved is able to address the regulatory burdens associated with such issues by regulation, or whether such burdens must be addressed by legislative action.

SEC. 232. COUNTRY RISK REQUIREMENTS.

Subsections (a)(1) and (b) of section 905 of the International Lending Supervision Act of 1983 (12 U.S.C. 3904) are amended by striking "shall" and inserting "may".

SEC. 233. AUDIT COSTS.

(a) IN GENERAL.—

(1) AUDITOR ATTESTATIONS.—Section 36 of the Federal Deposit Insurance At (12 U.S.C. 1831m) is amended—

(A) in subsection (a)(2)(A)(ii), by striking "subsections (c) and (d)" and inserting "subsection (c)";

(B) by striking subsections (c) and (e); and

(C) by redesignating subsections (d), (f), (g), (h), (i), and (j) as subsections (c), (d), (e), (f), (g), and (h), respectively.

(2) PUBLIC AVAILABILITY.—Section 36(a)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1831m(a)(3)) is amended by inserting at the end the following new sentence: "Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.".

(b) EXEMPTION FOR WELL-CAPITALIZED AND WELL-MANAGED INSURED DEPOSITORY INSTITUTIONS.—Section 36 of the Federal Deposit Insurance Act (12 U.S.C. 1831m) (as amended by subsection (a) of this section) is amended by adding at the end the following new subsection:

"(i) EXEMPTION FOR WELL-CAPITALIZED AND WELL-MANAGED INSURED DEPOSITORY INSTITUTIONS.—No provision of this section other than subsection (c) shall apply with respect to any insured depository institution which is well-capitalized and well-managed.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraph (1)(B) of section 36(e) of the Federal Deposit Insurance Act (as so redesignated by subsection (a)(1)(C) of this section) is amended by striking "(b)(2), (c), and (d)" and inserting "(b)(2) and (c)".

(2) Paragraph (1) of section 36(g) of the Federal Deposit Insurance Act (as so redesignated by subsection (a)(1)(C) of this section) is amended by striking "(d)" and inserting "(c)".

SEC. 234. STANDARDS FOR DIRECTOR AND OFFICER LIABILITY.

Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)) is amended—

(1) in paragraph (1), by inserting "(other than an outside director)" after "director";

(2) in paragraph (3), by inserting "(other than an outside director)" after "any other person"; and

(3) in paragraph (4), by inserting "or outside director" after "or accountant)".

SEC. 235. FOREIGN BANK APPLICATIONS.

(a) PROVISIONS RELATING TO ESTABLISHMENT OF BANK OFFICES.—Section 7(d) of the International Banking Act of 1978 (12 U.S.C. 3105(d)) is amended—

(1) in paragraph (2), by striking "The" and inserting "Except as provided in paragraph (6), the";

(2) in paragraph (5), by striking "Consistent with the standards for approval in paragraph (2), the" and inserting "The"; and

(3) by adding at the end the following new paragraphs:

"(6) EXCEPTION.—

"(A) IN GENERAL.—If the Board is unable to find under paragraph (2) that a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve an application under paragraph (1) by such foreign bank if—

"(i) the appropriate authorities in the home country of such foreign bank are working to establish arrangements for the consolidated supervision of such bank; and

"(ii) all other factors are consistent with approval.

"(B) ADDITIONAL CONDITIONS.—The Board, after requesting and considering the views of the appropriate State bank supervisor or the Comptroller of the Currency, as the case may be, may impose such conditions or restrictions relating to activities or business operations of the proposed branch, agency, or commercial lending company subsidiary, including restrictions on sources of funding, as are considered appropriate in the public interest.

"(C) MODIFICATION OF CONDITIONS.—Any condition or restriction imposed by the Board under this subsection in connection with the approval of an application may be varied or withdrawn where such modification is consistent with the public interest.

"(7) TIME PERIOD FOR BOARD ACTION.—

"(A) FINAL ACTION.—The Board shall take final action on any application under paragraph (1) within 180 days of receipt of the application, except that the Board may extend for an additional 180 days the period within which to take final action on such application, after providing notice of, and the reasons for, the extension to the applicant foreign bank and any appropriate State bank supervisor or the Comptroller of the Currency, as the case may be.

"(B) FAILURE TO SUBMIT INFORMATION.—The Board may deny any application if it has not received information requested from the applicant foreign bank or appropriate authorities in the home country in sufficient time to permit the Board to evaluate such information adequately within the time periods for final action set forth in subparagraph (A).

"(C) WAIVER.—A foreign bank may waive the applicability of subparagraph (A) with respect to any such application.".

(b) PROVISION RELATING TO TERMINATION OF BANK OFFICES.—Section 7(e)(1)(A) of the International Banking Act of 1978 (12 U.S.C. 3105(e)(1)(A)) is amended—

(1) by striking "(A)" and inserting "(A)(i)";

(2) by striking "; or" and inserting "; and"; and

(3) by inserting at the end the following new clause:

"(ii) the appropriate authorities in the home country are not making progress in establishing arrangements for the comprehensive supervision or regulation of such foreign bank on a consolidated basis; or".

(c) UNIFORM TERMINATIONS OF FOREIGN BANK OFFICES, AGENCIES, BRANCHES, AND SUBSIDIARIES BY THE FEDERAL RESERVE SYSTEM.—

(1) IN GENERAL.—Section 7(e)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(e)(1)) is amended—

(A) by inserting "or the Comptroller of the Currency" after "State bank supervisor";

(B) by inserting "or a Federal branch or agency" after "commercial lending company subsidiary" the 1st place such term appears; and

(C) in the last sentence, by inserting "or a Federal branch or agency" after "commercial lending company subsidiary".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 7(e) of the International Banking Act of 1978 (12 U.S.C. 3105(e)) is amended—

(A) by striking paragraph (5); and

(B) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

SEC. 236. DUPLICATE EXAMINATION OF FOREIGN BANKS.

Section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)) is amended—

(1) by adding after clause (ii) of subparagraph (B) the following new clause:

"(iii) AVOIDANCE OF DUPLICATION.—In exercising its authority under this paragraph, the Board shall take all reasonable measures to reduce burden and avoid unnecessary duplication of examinations.";

(2) by striking subparagraph (C) and inserting the following:

"(C) ON-SITE EXAMINATION.—Each Federal branch or agency, and each State branch or agency, of a foreign bank shall be subject to on-site examination by a Federal banking agency or State bank supervisor as frequently as would a national bank or State bank, respectively, by its appropriate Federal banking agency."; and

(3) by amending subparagraph (D) to read as follows:

"(D) COST OF EXAMINATIONS.—The cost of any examination undertaken pursuant to subparagraph (A) shall be assessed against and collected from the foreign bank or the foreign company that controls the foreign bank, as the case may be, but only to the same extent that fees are collected by the Board for examination of any State member insured bank.".

SEC. 237. SECOND MORTGAGES.

(a) IN GENERAL.—Section 103(aa)(1) of the Truth in Lending Act (15 U.S.C. 1602(aa)(1)) is amended—

(1) by inserting "a subordinate mortgage on" after "secured by"; and

(2) by striking "a residential mortgage transaction".

(b) EFFECT ON PENDING CASES.—Any administrative enforcement proceeding or other action which—

(1) is pending on the date of the enactment of this Act; and

(2) is based on regulations in effect as of such date under the Truth in Lending Act with respect to high-cost residential mortgage transactions which are not subordinate mortgages,

shall be dismissed as of such date.

SEC. 238. STREAMLINING FDIC APPROVAL OF NEW STATE BANK POWERS.

(a) IN GENERAL.—Section 24(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(a)) is amended to read as follows:

"(a) ACTIVITIES GENERALLY.—

"(1) IN GENERAL.—An insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

"(A) the bank has given the Corporation written notice of the bank's intention to engage in such activity at least 60 days before commencing to engage in the activity and within such 60-day period (or within the extended period provided under paragraph (2)) the Corporation has not disapproved the activity; and

"(B) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

"(2) EXTENSION OF PERIOD.—The Corporation may extend the 60-day period referred to in paragraph (1) for issuing a notice of disapproval with respect to any activity for an additional 30 days.

"(3) CONTENTS OF NOTICE.—Any notice submitted by a State bank under paragraph (1)(A) shall contain such information as the Corporation may require.

"(4) BASIS FOR DISAPPROVAL.—The Corporation may disapprove an activity for a State bank under this subsection unless the Corporation determines that the activity would pose no significant risk to the appropriate insurance fund.".

(b) SUBSIDIARIES OF INSURED STATE BANKS.—Section 24(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1831a(d)(1)) is amended to read as follows:

"(1) ACTIVITIES GENERALLY.—

"(A) IN GENERAL.—A subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

"(i) the subsidiary has given the Corporation written notice of the subsidiary's intention to engage in such activity at least 60 days before commencing to engage in the activity and within such 60-day period (or within the extended period provided under paragraph (2)) the Corporation has not disapproved the activity; and

"(ii) the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

"(B) EXTENSION OF PERIOD.—The Corporation may extend the 60-day period referred to in subparagraph (A) for issuing a notice of disapproval with respect to any activity for an additional 30 days.

"(C) CONTENTS OF NOTICE.—Any notice submitted by a subsidiary of an insured State bank under subparagraph (A)(i) shall contain such information as the Corporation may require.

"(D) BASIS FOR DISAPPROVAL.—The Corporation may disapprove an activity for a subsidiary of an insured State bank under this paragraph unless the Corporation determines that the activity would pose no significant risk to the appropriate insurance fund.".

SEC. 239. REPEAL OF CALL REPORT ATTESTATION REQUIREMENT.

Section 5211(a) of the Revised Statutes (12 U.S.C. 161(a)) is amended by striking the 4th sentence.

SEC. 240. AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.

(a) STATE SUPERVISION.—Chapter 1 of Title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended—

(1) by redesignating section 5136A as section 5136C; and

(2) by inserting after section 5136 (12 U.S.C. 24) the following new section:

"SEC. 5136A. STATE SUPERVISION OF INSURANCE.

"(a) STATE LICENSING OF INSURANCE ACTIVITIES.—

"(1) IN GENERAL.—Subject to paragraph (2), no provision of section 5136, any other section of this title, or section 13 of the Federal Reserve Act may be construed as limiting or otherwise impairing the authority of any State to regulate—

"(A) the extent to which, and the manner in which, a national bank may engage within the State in insurance activities pursuant to section 5136B of this chapter or section 13 of the Federal Reserve Act;

"(B) the manner in which a national bank may engage within the State in insurance activities pursuant to section 5136(b)(2)(B) of the Revised Statutes of the United States; or

"(C) the manner in which a national bank may engage within the State in insurance activities pursuant to section 5136(b)(2)(A) of the Revised Statutes of the United States through, and limited to, consumer disclosure requirements or licensing requirements, procedures, and qualifications as described in paragraph (2)(C).

"(2) PROHIBITION ON STATE DISCRIMINATION AGAINST NATIONAL BANKS.—Notwithstanding paragraph (1)—

"(A) PROVIDING INSURANCE AS AGENT OR BROKER.—No State may impose any insurance regulatory requirement relating to providing insurance as an agent or broker that treats a national bank differently than all other persons who are authorized to provide insurance as agents or brokers in such State, unless there is a legitimate and reasonable State regulatory purpose for the requirement for which there is no less restrictive alternative.

"(B) PROVIDING INSURANCE AS PRINCIPAL, AGENT, OR BROKER.—

"(i) No State may impose on a national bank any insurance regulatory requirement relating to providing insurance as principal, agent, or broker that treats the national bank more restrictively than any other depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(1)) operating in the State.

"(ii) Nothing in this subparagraph shall affect the validity of a State law that—

"(I) prevents a national bank from engaging in insurance activities within the State to as great an extent as a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1)) may engage in such activities within the State; and

"(II) was in effect on June 1, 1995.

"(C) LICENSING QUALIFICATIONS AND PROCEDURES.—No State may discriminate against a national bank with respect to the following requirements, procedures, and qualifications as such requirements, procedures, and qualifications relate to the authority of the national bank to provide insurance in such State as an agent or broker:

"(i) License application and processing procedures.
"(ii) Character, experience, and educational qualifications for licenses.
"(iii) Testing and examination requirements for licenses.
"(iv) Fee requirements for licenses.
"(v) Continuing education requirements.
"(vi) Types of licenses required.
"(vii) Standards and requirements for renewal of licenses.

"(b) AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.—A national bank may not provide insurance as a principal, agent, or broker except as specifically provided in this section, the paragraph designated as the 'Seventh' of section 5136(a) of this chapter, section 5136(b) or 5136B of this chapter, or section 13 of the Federal Reserve Act.

"(c) PRESERVATION OF FEDERALLY AUTHORIZED BANK ACTIVITIES IN PERMISSIVE STATES.—No provision of this section may be construed as affecting the authority, pursuant to section 5136B of this chapter or section 13 of the Federal Reserve Act, of a national bank to act as insurance agent or broker consistent with State law.

"(d) PRESERVATION OF NATIONAL BANK AUTHORITY CONSISTENT WITH STATE BANK AUTHORITY.—Except as provided in subsection (a)(2)(B), no provision of this section or section 5136(b)(1) shall have the effect of enabling a State to deny a national bank authority that the bank otherwise possesses to provide a product in a State, including as agent, broker, or principal, where the bank is not providing the product in the State other than to an extent and in a manner that a State bank (as defined in section 3(a)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(a)(2)) is permitted by the law of the State to provide such product, except that nothing in this subsection shall be construed as granting any new authority to a national bank to provide any product because the law of the State has authorized State banks to provide such product.

"(e) DEFINITIONS.—For purposes of this section, sections 5136 and 5136B, and section 13 of the Federal Reserve Act, the following definitions shall apply:

"(1) INSURANCE.—The term 'insurance' means any product defined or regulated as insurance, consistent with the relevant State insurance law, by the insurance regulatory authority of the State in which such product is sold, solicited, or underwritten, including any annuity contract the income on which is tax deferred under section 72 of the Internal Revenue Code of 1986.

"(2) STATE.—The term 'State' has the same meaning as in section 3(a)(3) of the Federal Deposit Insurance Act.

"(f) GRANDFATHER PROVISION.—

"(1) IN GENERAL.—Any national bank which, before January 1, 1995, was providing insurance as agent or broker under section 13 of the Federal Reserve Act may provide insurance as an agent or broker under such section, to no less extent and in a no more restrictive manner as such bank was providing insurance as agent or broker under such section on January 1, 1995, notwithstanding contrary State law, subject to final, controlling judgment in a pending action.

"(2) TERMINATION.—This subsection shall cease to apply with respect to any national bank described in paragraph (1) if—

"(A) the bank is subject to an acquisition, merger, consolidation, or change in control, other than a transaction to which section 18(c)(12) of the Federal Deposit Insurance Act applies; or

"(B) any bank holding company which directly or indirectly controls such bank is subject to an acquisition, merger, consolidation, or change in control, other than a transaction in which the beneficial ownership of such bank holding company or of a bank holding company which controls such company does not change as a result of the transaction.

"(g) PRESERVATION OF BANKING PRODUCTS.—Nothing in this section shall be construed as affecting the ability of a national bank, or a subsidiary of a national bank,

to engage in any activity, including any activity authorized pursuant to the paragraph designated the "Seventh" of section 5136(a), that is part of, and not merely incidental to, the business of banking.".

(b) INTERPRETIVE AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.—Section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended—

(1) by striking "Upon duly making and filing articles of association" and inserting "(a) IN GENERAL.—Upon duly making and filing articles of association"; and

(2) by adding at the end the following new subsection:

"(b) INTERPRETIVE AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.—

"(1) IN GENERAL.—Subject to paragraph (2), it shall not be incidental to banking for a national bank to provide insurance as a principal, agent, or broker.

"(2) SCOPE OF APPLICATION.—Notwithstanding paragraph (1), it shall be incidental to banking for a national bank to engage in the following activities:

"(A) Providing, as an agent or broker, any annuity contract the income on which is tax deferred under section 72 of the Internal Revenue Code of 1986.

"(B) Providing, as a principal, agent, or broker, any type of insurance, other than an annuity or title insurance, which the Comptroller of the Currency specifically determined, before May 1, 1995, to be incidental to banking with respect to national banks.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The 11th undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 92) is amended by inserting ", and subject to section 5136A of the Revised Statutes of the United States," after "the laws of the United States".

(2) The paragraph designated the "Seventh" of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended by striking "subject to law," and inserting "subject to subsection (b), section 5136A, and any other provision of law,".

(3) Section 1306 of title 18, United States Code, is amended by striking "5136A" and inserting "5136C".

(d) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title LXII of the Revised Statutes of the United States is amended—

(1) by redesignating the item relating to section 5136A as section 5136C; and

(2) by inserting after the item relating to section 5136 the following new item:

"5136A. State supervision of insurance.".

(e) PRESERVATION OF BANK HOLDING COMPANY INSURANCE AUTHORITY.—No provision of this section, and no amendment made by this section to any other provision of law, may be construed as affecting the authority of a bank holding company to engage in insurance agency activity pursuant to section 4(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)).

SEC. 241. NATIONAL BANK COMMUNITY DEVELOPMENT INSURANCE ACTIVITIES.

(a) IN GENERAL.—Chapter 1 of Title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136A (as added by section 240(a) of this Act) the following new section:

"SEC. 5136B. INSURANCE SALES IN EMPOWERMENT ZONES.

"(a) AUTHORITY TO SELL INSURANCE AS AGENT FROM EMPOWERMENT ZONES.—The Comptroller of the Currency may approve an application by a national bank maintaining a main office or full-service branch in an empowerment zone to act as an agent or broker from such office or branch for any fire, life, or other insurance company authorized to do business in the State in which the customer is located if—

"(1) the bank provides sufficient evidence that the availability of competitively priced insurance in the empowerment zone is inadequate; and

"(2) the insurance is sold only in the empowerment zone.

"(b) APPLICATION OF STATE LAW.—State laws which regulate conducting the business of insurance shall apply to national banks and their employees that sell insurance as agent or broker under this section to the same extent as such laws apply to other entities and persons not affiliated with depository institutions except—

"(1) in any case in which the Comptroller of the Currency determines, after notice to and comment by the appropriate State insurance officials, that the application of a State law would have an unreasonably discriminatory effect upon the sale of insurance by national banks or their employees in comparison with the effect the application of the State law would have with respect to sale of insurance by other entities; or

"(2) when State law by its own terms does not apply to national banks or employees of such banks.

"(c) AUTHORITY OF COMPTROLLER OF THE CURRENCY.—

"(1) IN GENERAL.— The Comptroller of the Currency may prescribe regulations governing sales of insurance by national banks pursuant to this section.

"(2) ENFORCEMENT OF STATE LAW.—The provisions of any State law to which a national bank is subject under this section shall be enforced with respect to such bank by the Comptroller of the Currency.

"(d) DEFINITIONS.—

"(1) EMPOWERMENT ZONE.—The term 'empowerment zone' means an area that meets the standards for designation as an empowerment zone or enterprise community under section 1392 of the Internal Revenue Code of 1986 or an Indian reservation.

"(2) FULL-SERVICE BRANCH.—The term 'full-service branch' means a staffed facility which has been approved as a branch and offers loan and deposit services.

"(3) INDIAN RESERVATION.—The term 'Indian reservation' has the meaning given such term by section 168(j)(6) of the Internal Revenue Code of 1986.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title LXII of the Revised Statutes of the United States is amended by inserting after the item relating to section 5136A (as added by section 240(d) of this title) the following new item:

"5136B. Insurance sales in empowerment zones.".

SEC. 242. AUTHORIZING BANK SERVICE COMPANIES TO ORGANIZE AS LIMITED LIABILITY PARTNERSHIPS.

(a) AMENDMENT TO SHORT TITLE.—Section 1 of the Bank Service Corporation Act (12 U.S.C. 1861(a)) is amended by striking subsection (a) and inserting the following new subsection:

"(a) SHORT TITLE.—This Act may be cited as the 'Bank Service Company Act'.";

(b) AMENDMENTS TO DEFINITIONS.—Section 1(b) of the Bank Service Corporation Act (12 U.S.C. 1861(b)) is amended—

(1) by striking paragraph (2) and inserting the following new paragraph:

"(2) the term 'bank service company' means—

"(A) any corporation—

"(i) which is organized to perform services authorized by this Act; and

"(ii) all of the capital stock of which is owned by 1 or more insured banks; and

"(B) any limited liability company—

"(i) which is organized to perform services authorized by this Act; and

"(ii) all of the members of which are 1 or more insured banks.";

(2) in paragraph (6)—

(A) by striking "corporation" and inserting "company"; and

(B) by striking "and" after the semicolon;

(3) by redesignating paragraph (7) as paragraph (8) and inserting after paragraph (6) the following new paragraph:

"(7) the term 'limited liability company' means any company organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company; and"; and

(4) in paragraph (8) (as so redesignated)—

(A) by striking "corporation" each place such term appears and inserting "company"; and

(B) by striking "capital stock" and inserting "equity".

(c) AMENDMENTS TO SECTION 2.—Section 2 of the Bank Service Corporation Act (12 U.S.C. 1862) is amended—

(1) by striking "corporation" and inserting "company";

(2) by striking "corporations" and inserting "companies"; and

(3) in the heading for such section, by striking "CORPORATION" and inserting "COMPANY".

(d) AMENDMENTS TO SECTION 3.—Section 3 of the Bank Service Corporation Act (12 U.S.C. 1863) is amended—

(1) by striking "corporation" each place such term appears and inserting "company"; and

(2) in the heading for such section, by striking "CORPORATION" and inserting "COMPANY".

(e) AMENDMENTS TO SECTION 4.—Section 4 of the Bank Service Corporation Act (12 U.S.C. 1864) is amended—

(1) by striking "corporation" each place such term appears and inserting "company";

(2) in subsection (b), by inserting "or members" after "shareholders" each place such term appears;

(3) in subsections (c) and (d), by inserting "or member" after "shareholder" each place such term appears;

(4) in subsection (e)—

(A) by inserting "or members" after "national bank and State bank shareholders";

(B) by striking "its national bank shareholder or shareholders" and inserting "any shareholder or member of the company which is a national bank";

(C) by striking "its State bank shareholder or shareholders" and inserting "any shareholder or member of the company which is a State bank";

(D) by striking "such State bank or banks" and inserting "any such State bank"; and

(E) by inserting "or members" after "State bank and national bank shareholders";

(5) in subsection (f), by inserting "or providing insurance as principal, agent, or broker (except to the extent permitted under subparagraph (A) or (E) of section 4(c)(8) of the Bank Holding Company Act of 1956)" after "or deposit taking"; and

(6) in the heading for such section, by striking "CORPORATION" and inserting "COMPANY".

(f) AMENDMENTS TO SECTION 5.—Section 5 of the Bank Service Corporation Act (12 U.S.C. 1865) is amended—

(1) by striking "corporation" each place such term appears and inserting "company"; and

(2) in the heading for such section, by striking "CORPORATIONS" and inserting "COMPANIES".

(g) AMENDMENTS TO SECTION 6.—Section 6 of the Bank Service Corporation Act (12 U.S.C. 1866) is amended—

(1) by striking "corporation" each place such term appears and inserting "company";

(2) by inserting "or is not a member of" after "does not own stock in";

(3) by striking "the nonstockholding institution" and inserting "such depository institution";

(4) by inserting "or is a member of" after "that owns stock in";

(5) in paragraphs (1) and (2), by inserting "or nonmember" after "nonstockholding"; and

(6) in the heading for such section by inserting "OR NONMEMBERS" after "NONSTOCKHOLDERS".

(h) AMENDMENTS TO SECTION 7.—Section 7 of the Bank Service Corporation Act (12 U.S.C. 1867) is amended—

(1) by striking "corporation" each place such term appears and inserting "company";

(2) in subsection (a)—

(A) by inserting "or principal member" after "principal shareholder"; and

(B) by inserting "or member" after "other shareholder"; and

(3) in the heading for such section, by striking "CORPORATIONS" and inserting "COMPANIES".

SEC. 243. BANK INVESTMENTS IN EDGE ACT AND AGREEMENT CORPORATIONS.

The 10th undesignated paragraph of section 25A of the Federal Reserve Act (12 U.S.C. 618) is amended by striking the last sentence and inserting the following: "Any national bank may invest in the stock of any corporation organized under this section. The aggregate amount of stock held by any national bank in all corporations engaged in business of the kind described in this section or section 25 shall not exceed an amount equal to 10 percent of the capital and surplus of such bank unless the Board determines that the investment of an additional amount by the bank would not be unsafe or unsound and, in any case, shall not exceed an amount equal to 25 percent of the capital and surplus of such bank.".

SEC. 244. REPORT ON THE RECONCILIATION OF DIFFERENCES BETWEEN REGULATORY ACCOUNTING PRINCIPLES AND GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

Before the end of the 180-day period beginning on the date of the enactment of this Act, each appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) shall submit to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the actions taken and to be taken by the agency to eliminate or conform inconsistent or duplicative accounting

and reporting requirements applicable to reports or statements filed with any such agency by insured depository institutions, as required by section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

SEC. 245. WAIVERS AUTHORIZED FOR RESIDENCY REQUIREMENT FOR NATIONAL BANK DIRECTORS.

The 1st sentence of section 5146 of the Revised Statutes of the United States (12 U.S.C. 72) is amended by inserting "(1) the Comptroller of the Currency may, in the Comptroller's discretion, waive the residency requirement in the case of any director of a national bank to whom the requirement would otherwise apply, and (2)" after "except that".

TITLE III—LENDER LIABILITY

SEC. 301. LENDER LIABILITY.

(a) IN GENERAL.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding after section 44, the following new section:

"SEC. 45. LENDER, FIDUCIARY, AND GOVERNMENT AGENCY ENVIRONMENTAL LIABILITIES.

"(a) LENDER ENVIRONMENTAL LIABILITY.—

"(1) IN GENERAL.— Notwithstanding any other provision or rule of Federal law, no lender, acting as defined in this section, shall be liable pursuant to a Federal environmental law, except as provided in this section.

"(2) ACTUAL PARTICIPATION REQUIRED.—A lender shall only be liable pursuant to a Federal environmental law when the lender actually participates in management of another person's activities which create liability under the same Federal environmental law.

"(3) DEFINITIONS.—The following definitions shall apply for purposes of this section:

"(A) PARTICIPATE IN MANAGEMENT.—The term 'participate in management' means actually participating in the management or operational affairs of other persons' activities, and does not include merely having the capacity to influence, or the unexercised right to control such activities;

"(B) PARTICIPATE IN MANAGEMENT.—A person shall be considered to 'participate in management' while a borrower is still in possession of property, only if such person—

"(i) exercises decisionmaking control over the environmental compliance of a borrower, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices of the borrower; or

"(ii) exercises control at a level comparable to that of a manager of the enterprise of the borrower, such that the person has assumed or manifested responsibility for the overall management of the enterprise encompassing day-to-day decisionmaking with respect to environmental compliance, or with respect to substantially all of the operational aspects (as distinguished from financial or administrative aspects) of the enterprise, other than environmental compliance.

"(C) PARTICIPATE IN MANAGEMENT.—The term 'participate in management' does not include engaging in an act or failing to act before the time that an extension of credit is made or a security interest is created in property.

"(D) PARTICIPATE IN MANAGEMENT.—The term 'participate in management' does not include, unless such actions rise to the level of participating in management (as defined in subparagraphs (A) and (B))—

"(i) holding an extension of credit or a security interest or abandoning or releasing an extension of credit or a security interest;

"(ii) including in the terms of an extension of credit, or in a contract or security agreement relating to such an extension, covenants, warranties, or other terms and conditions that relate to environmental compliance;

"(iii) monitoring or enforcing the terms and conditions of an extension of credit or security interest;

"(iv) monitoring or undertaking 1 or more inspections of property, except that monitoring or undertaking any such inspection, although not required by this subsection, shall provide probative evidence that a holder of a security interest is acting to preserve and protect the prop-

erty during the time the holder may have possession or control of such property;

"(v) requiring or conducting a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with property prior to, during, or upon the expiration of the term of an extension of credit;

"(vi) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the property;

"(vii) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of an extension of credit or security interest, or exercising forbearance; or

"(viii) exercising other remedies that may be available under applicable law for the breach of any term or condition of the extension of credit or security agreement.

"(E) When a lender did not participate in management of property prior to foreclosure, then the lender shall not be liable even if such person forecloses on property, sells, re-leases, or liquidates property, maintains business activities, winds up operations, or undertakes any response action with respect to property, or takes other measures to preserve, protect, or prepare property prior to sale or disposition, if such person seeks to sell, release, or otherwise divest the property at the earliest practical, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

"(4) LIMITATION ON LIABILITY.—The liability of any lender that is liable under any Federal environmental law shall be limited to only the cost of any response action or corrective action to the extent and in the amount that the lender actively and directly contributed to the hazardous substance release. A lender shall not be liable for the cost of any response action or corrective action relating to the release of a hazardous substance which commences before and continues after the lender obtains a security interest in the property so long as the lender does not actively and directly contribute to the hazardous substance release.

"(b) FIDUCIARY ENVIRONMENTAL LIABILITY.—

"(1) IN GENERAL.— Notwithstanding any other provision or rule of Federal law, no fiduciary, acting as defined in this section, shall be liable pursuant to any Federal environmental law, except as provided in this section.

"(2) LIABILITY OF FIDUCIARY.—

"(A) Subject to subparagraphs (B) and (C), a fiduciary holding title to property or otherwise affiliated with property solely in a fiduciary capacity shall be personally subject to the obligations and liabilities of any person under any Federal environmental law, to the same extent as if the property were held by the fiduciary free of trust.

"(B) The personal obligations and liabilities of a fiduciary referred to in subparagraph (A) shall be limited to the extent to which the assets of the trust or estate are sufficient to indemnify the fiduciary, unless—

"(i) the obligations and liabilities would have arisen even if the person had not served as a fiduciary;

"(ii) the fiduciary's own failure to exercise due care with respect to property caused or contributed to the release of hazardous substances following establishment of the trust, estate, or fiduciary relationship; or

"(iii) the fiduciary had a role in establishing the trust, estate, or fiduciary relationship, and such trust, estate, or fiduciary relationship has no objectively reasonable or substantial purpose apart from the avoidance or limitation of liability under an environmental law.

Nothing in the preceding sentence shall be construed as requiring indemnification by an employee benefit plan (within the meaning of paragraph (3) of section 3 of Employee Retirement Income Security Act of 1974), or by any trust forming a part thereof, of any fiduciary of such plan contrary to the terms of the plan or in an amount in excess of the amount permitted under the terms of such plan.

"(C) A fiduciary shall not be personally liable for undertaking or directing another to undertake a response action.

"(3) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as affecting the liability, if any, of any person who—

"(A)(i) acts in a capacity other than a fiduciary capacity; and

"(ii) directly or indirectly benefits from a trust or fiduciary relationship; or

"(B)(i) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

"(ii) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable laws.

"(c) DEFINITIONS.—For purposes of subsections (a) and (b), the following definitions shall apply:

"(1) FEDERAL ENVIRONMENTAL LAW.—The term 'Federal environmental law' means any Federal statute or rule of common law with the purpose of protection of the environment and any Federal regulation promulgated thereunder and any State statute or regulation created as a federally approved or delegated program implementing these laws, including the following:

"(A) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

"(B) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

"(C) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

"(D) The Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

"(E) The Clean Air Act (42 U.S.C. 7401 et seq.).

"(F) The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

"(G) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

"(H) The Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.).

"(2) EXTENSION OF CREDIT.—The term 'extension of credit' means the making or renewal of any loan, a granting of a line of credit or extending credit in any manner, such as an advance by means of an overdraft or the issuance of a standby letter of credit, and a lease finance transaction—

"(A) in which the lessor does not initially select the leased property and does not, during the lease term, control the daily operation or maintenance of the property; or

"(B) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisory (as these terms are defined in section 3 of the Federal Deposit Insurance Act or with regulations issued by the National Credit Union Administration Board, as appropriate.

"(3) FIDUCIARY.—The term 'fiduciary' means a person who acts for the exclusive benefit of another person as a bona fide fiduciary within the meaning of section 3(21) of the Employee Retirement Income Security Act of 1974, trustee, executor, administrator, custodian, guardian, conservator, receiver, committee of estates of lunatics or other disabled persons, or personal representative; except, that the term 'fiduciary' does not include any person—

"(A) who owns, or controls, is affiliated with, or takes any action with respect to property on behalf of or for the benefit of a lender or takes any action to protect a lender's extension of credit or security interest (any such person shall be treated as a lender under subsection (a) of this section); or

"(B) who is acting as a fiduciary with respect to a trust or other fiduciary estate that—

"(i) was not created as part of, or to facilitate, one or more estate plans or pursuant to the incapacity of a natural person; and

"(ii) was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit.

"(4) FINANCIAL OR ADMINISTRATIVE ASPECT.—The term 'financial or administrative aspect' means a function such as a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or any similar function.

"(5) FORECLOSURE, FORECLOSE.—The terms 'foreclosure' and 'foreclose' means, respectively, acquiring, and to acquire, property through—

"(A) purchase at sale under a judgment or decree, a power of sale, a nonjudicial foreclosure sale, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such property was security for an extension of credit previously contracted;

"(B) conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

"(C) any other formal or informal manner by which the person acquires, for subsequent disposition, possession of collateral in order to protect the security interest of the person.

"(6) HAZARDOUS SUBSTANCE.—The term 'hazardous substance' means any chemical, biological, organic, inorganic, or radioactive pollutants, contaminants,

materials, waste, or other substances regulated under, defined, listed, or included in any Federal environmental law.

"(7) LENDER.—The term 'lender' means—

"(A) a person that makes a bona fide extension of credit to or takes a security interest from another person and includes a successor or assign of the person which makes the extension of credit or takes the security interest;

"(B) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or other entity that in a bona fide manner is engaged in the business of buying or selling loans on interests therein;

"(C) any person engaged in the business of insuring or guaranteeing against a default in the repayment of an extension of credit, or acting as a surety with respect to an extension of credit, to other persons; or

"(D) any person regularly engaged in the business of providing title insurance who acquires property as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

"(8) OPERATIONAL ASPECT.—The term 'operational aspect' means a function such as a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

"(9) PERSON.—The term 'person' means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

"(10) PROPERTY.—The term 'property' means real, personal, and mixed property.

"(11) RESPONSE ACTION.—The term 'response action' shall have the same meaning as that term is defined in section 101 of the Comprehensive Environmental Response, Compensation and Liability Act.

"(12) SECURITY INTEREST.—The term 'security interest' means a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease, or any other right accruing to a person to secure the repayment of money, the performance of a duty, or some other obligation.

"(d) SAVINGS CLAUSE.—Nothing in subsections (a) (b), or (c), shall—

"(1) affect the rights or immunities or other defenses that are already available to lenders or fiduciaries under any Federal environmental law;

"(2) be construed to create any liability for any lender or fiduciary; or

"(3) create a private right of action against any lender or fiduciary.

"(e) FEDERAL BANKING AND LENDING AGENCY ENVIRONMENTAL LIABILITY.—

"(1) GOVERNMENTAL ENTITIES.—

"(A) BANKING AND LENDING AGENCIES.—Except as provided in paragraph (C), a Federal banking or lending agency shall not be liable under any law imposing strict liability for the release or threatened release of petroleum or a hazardous substance at or from property (including any right or interest therein) acquired—

"(i) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including any of its subsidiaries, and bridge bank;

"(ii) in connection with the provision of loans, discounts, advances, guarantees, insurance, or other financial assistance; or

"(iii) in connection with property received in any civil or criminal proceeding, or administrative enforcement action, whether by settlement or order.

"(B) APPLICATION OF STATE LAW.—Nothing in paragraph (e) shall be construed as preempting, affecting, applying to, or modifying any State law, or any rights, actions, cause of action, or obligations under State law, except that liability under State law shall not exceed the value of the agency's interest in the asset giving rise to such liability. Nothing in this section shall be construed to prevent a Federal banking or lending agency from agreeing with a State to transfer property to such State in lieu of any liability that might otherwise be imposed under State law.

"(C) LIMITATION.—Notwithstanding paragraph (A), and subject to section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a Federal banking or lending agency that directly caused or materially contributed to the release of petroleum or a hazardous

substance may be liable for removal, remedial, or other response action pertaining to that release.

"(D) SUBSEQUENT PURCHASER.—The immunity provided by paragraphs (A) and (B) shall extend to the first subsequent purchaser of property described in such paragraph from a Federal banking or lending agency, unless such purchaser—

"(i) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, or other response action due to a prior relationship with the property;

"(ii) is or was affiliated with or related to a party described in subparagraph (i);

"(iii) fails to agree to take reasonable steps necessary to abate the release or threatened release or to protect public health and safety in a manner consistent with the purposes of applicable Federal environmental laws; or

"(iv) directly causes or significantly and materially contributes to any additional release or threatened release on the property.

"(E) FEDERAL OR STATE ACTION.—Notwithstanding subparagraph (D), if a Federal agency or State environmental agency is required to take remedial action due to the failure of a subsequent purchaser to carry out, in good faith, the agreement described in subparagraph (D)(iii), such subsequent purchaser shall reimburse the Federal or State environmental agency for the costs of such remedial action. Any such reimbursement shall not exceed the increase in the fair market value of the property attributable to the remedial action.

"(2) LIEN EXEMPTION.—Notwithstanding any other provision of law, any property held by a subsequent purchaser referred to in paragraph (1)(D) or held by a Federal banking or lending agency shall not be subject to any lien for costs or damages associated with the release or threatened release of petroleum or a hazardous substance existing at the time of the transfer.

"(3) EXEMPTION FROM COVENANTS TO REMEDIATE.—A Federal banking or lending agency shall be exempt from any law requiring such agency to grant covenants warranting that a removal, remedial, or other response action has been, or will in the future be, taken with respect to property acquired in the manner described in paragraph (e)(1)(A).

"(4) DEFINITIONS.—For purposes of subsection (e), the following definitions shall apply:

"(A) FEDERAL BANKING OR LENDING AGENCY.—The term 'Federal banking or lending agency' means the Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, a Federal Reserve Bank, a Federal Home Loan Bank, the Department of Housing and Urban Development, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, the Small Business Administration, and any other Federal agency acting in a similar capacity, in any of their capacities, and their agents or appointees.

"(B) HAZARDOUS SUBSTANCE.—The term 'hazardous substance' has the same meaning as in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

"(C) RELEASE.—The term 'release' has the same meaning as in section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and includes the use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

"(5) SAVINGS CLAUSE.—Nothing in subsection (e) shall—

"(A) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party, subject to the provisions of this section;

"(B) be construed to create any liability for any party; or

"(C) create a private right of action against an insured depository institution or lender or against a Federal banking or lending agency.".

(b) EFFECTIVE DATE.—This section shall take effect upon the date of the enactment of this Act and shall apply to any claim against any lender, fiduciary, or government agency under any Federal environmental law that has not been finally resolved by adjudication or settlement before such date.

TITLE IV—ANNUAL STUDY AND REPORT ON IMPACT ON LENDING TO SMALL BUSINESS

SEC. 401. ANNUAL STUDY AND REPORT.

Not later than 12 months after the date of the enactment of this Act, and annually thereafter, the Board of Governors of the Federal Reserve System, the Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Board of Directors of the Federal Deposit Insurance Corporation shall jointly conduct a study and submit to the Congress a report on the extent to which this Act and the amendments made by this Act have, through reductions in regulatory burdens, resulted in increased lending to small businesses.

BACKGROUND AND NEED FOR LEGISLATION

The Financial Institutions Regulatory Relief Act of 1995 advances the effort begun by the 102nd Congress to remove unnecessary and redundant regulations imposed on the nation's financial institutions without affecting safety and soundness. Over the past 25 years, a variety of new laws and regulations in the areas of safety and soundness and consumer protections has been imposed on financial institutions. Over the course of time, however, some of these laws and regulations have proven to be duplicative and counterproductive causing bank resources to be dedicated to costly paperwork and compliance review processes instead of commercial and consumer lending. Needless regulations result in inefficiency and increased costs to both financial institutions and consumers. In addition, the added cost of regulation produces disintermediation—the movement of savings dollars from traditional federally insured institutions to other venues where regulatory requirements are less burdensome and thus less costly. Ironically, the volume of information required to be provided to consumers under the numerous Federal consumer protection laws is so overwhelming that consumers are frequently more confused than informed. By removing excessive regulation this legislation is designed to encourage operational efficiency and to support the competitiveness of financial institutions without compromising the safety and soundness mechanisms or consumer protections required to uphold the integrity of the U.S. banking system.

The complex regulatory environment of the early 1990s evolved in response to a variety of problems that occurred in financial markets during the 1970s and 1980s, including the savings and loans crisis. In an effort to respond to economic immediacies, Congress enacted a series of statutes designed to improve the supervision of savings associations and to curtail investments and other activities that posed unacceptable risks to the Federal deposit insurance funds.

While it is clear that many of the safety and soundness provisions enacted as a result of the financial conditions in the 1980s, such as those mandating strong capital requirements and accurate accounting standards, are necessary, other provisions are generally considered to be unnecessary burdens by regulators and the banking industry. In addition, these legislative actions were followed by an avalanche of implementing regulations that have overwhelmed the management of many depository institutions regardless of size.

Other significant factors in the growth of regulatory burden are the numerous Federal consumer protection laws enacted by Congress. These statutes include the Real Estate Settlement Procedures Act of 1977 (RESPA), the Truth in Lending Act (TILA), the Home Mortgage Disclosure Act (HMDA), the Equal Credit Opportunity Act (ECOA), the Fair Credit Reporting Act (FCRA), the Fair Housing Act (FHA), the Electronic Fund Transfer Act (EFTA), and the Fair Debt Collection Practices Act (FDCPA). Again, while the objectives of these laws may be worthwhile, implementation of these and other new requirements has increased reporting, disclosure, and recordkeeping which, in turn, has increased the cost of extending credit and offering deposit products. Moreover, experience has shown that inundating consumers with a countless array of documents written in legal, technical language generally fails to provide consumers with the types of useful information intended by the above laws.

As a result of all of these statutory and regulatory developments, depository institutions today bear a heavy regulatory burden. Three years ago, the banking industry estimated that the cost of compliance was into the billions of dollars. Various other studies over the past few years have estimated that compliance with regulatory requirements imposes significant direct costs on banks, some portion of which is passed on to the consumer. At times, the burden falls disproportionately on insured banks and thrifts, as compared with other types of financial institutions. Given the increased competition in the financial services market from nonbank entities not subject to federal regulations, regulatory burdens should not unnecessarily place banks at a competitive disadvantage.

It is also important to recognize that regulatory burden generally has a significantly greater impact on smaller institutions. For example, one-quarter of the banks supervised by the Federal Deposit Insurance Corporation (FDIC) have fewer than 13 employees on a full-time basis. A labor force of this size cannot deal with the complexity and sheer volume of regulatory and legislative requirements, whereas larger institutions can more easily integrate such requirements into their business operations.

In short, the need for this legislation arises from the fact that the regulatory environment is too complex, the cost compliance is too high, and the resulting competitive disadvantages facing financial institutions are too great. In order to ensure the integrity, the competitiveness, and the continued success of the nation's banking system, certain legislative action must be taken to reduce the unnecessary regulatory burdens currently imposed on financial institutions.

PURPOSE AND SUMMARY

The purpose of this legislation is to streamline, rationalize, and modernize the regulation of financial institutions and to maintain the safety and soundness of the nation's financial systems and necessary consumer protections. This threefold objective is principally achieved by removing unnecessary reporting, disclosure, or recordkeeping requirements or by making appropriate modifications thereto. By reducing regulatory burdens, this legislation strives to significantly lower the cost of compliance and to promote competi-

tion among all types of financial institutions both within and outside of the United States. At the same time, this legislation deliberately preserves the legislative safeguards already in law that pertain to safety and soundness and consumer protection. This legislation, ultimately, is intended to provide the consumer with greater choices and lower prices for financial products and services.

TITLE I—REDUCTIONS IN GOVERNMENT OVERREGULATION

SUBTITLE A—THE HOME MORTGAGE PROCESS

1. Rationalizing the home mortgage lending process

Government overregulation of the nation's home mortgage lending process has resulted in higher costs, excessive paperwork, and consumer frustration to the detriment of both financial institutions and consumers. Legislation is needed to rationalize the regulatory framework that governs the home mortgage lending process in order to eliminate unnecessary costs, burdens, and complexity while providing more useful information to consumers.

Currently, the home mortgage lending process is governed by the TILA and the RESPA. The TILA was enacted to enable consumers to shop comparatively for consumer credit by requiring lenders to disclose interest rates and other information about credit terms and costs in a uniform way. The TILA governs disclosures required for all consumer credit transactions, a uniform way. The TILA governs disclosures required for all consumer credit transactions, including home mortgages. The RESPA was enacted to ensure that consumers are provided with greater and more timely information on the nature and costs of the real estate settlement process and are protected from unnecessarily high settlement charges and fees.

Under this system of dual supervision, there is considerable overlap in regulatory requirements, especially with respect to disclosure statements. Duplicative disclosure statements unnecessarily increase the costs of compliance and ultimately lessen the financial institution's ability to engage in mortgage lending. Moreover, redundancy in disclosure statements is frequently confusing to the consumer and often needlessly complicates the settlement process. In order to reduce the statutory overlap and to eliminate unnecessary paperwork, this legislation would transfer rulemaking authority relating to the disclosure provisions under the RESPA from the Department of Housing and Urban Development (HUD) to the Federal Reserve Board, which currently has rulemaking authority under the TILA. Furthermore, this legislation mandates the Board to reconcile differences between the disclosure provisions found in the TILA and the RESPA, to simplify disclosures, including the timing thereof, and to create a single format for such disclosures. These changes would reduce compliance costs and provide more meaningful information to the consumer.

The current enforcement structure with regard to disclosures under the RESPA and the TILA is also problematic. Not only do these statutes have two different mechanisms for providing similar information in real estate transactions, but they are presently interpreted by two different regulators. By transferring interpretive authority for RESPA disclosures to the Board, along with instruc-

tions to eliminate duplicative and unnecessary requirements, real estate transactions will be greatly simplified.

All other sections of RESPA pertaining to settlement services, including section 8, remain under the jurisdiction of HUD. In light of the fact that HUD is currently not providing any clear and consistent regulatory guidance to settlement service providers under RESPA, this legislation requires HUD to utilize a negotiated rulemaking process provided for under the Negotiated Rulemaking Act of 1990 before proceeding with any additional proposed and final rules under Sections 8 and 9 of the RESPA. Negotiated rulemaking will ensure that the concerns of all parties are expressed before HUD issues any rules regarding real estate settlement issues.

Enforcement of the settlement service sections of RESPA are retained under HUD authority with regard to non-banking entities and are transferred to the appropriate federal banking agencies for banking organizations. Additionally, in situations where numerous enforcement agencies are involved, agencies are required to coordinate their enforcement activities in order to assure that institutions are subject to the same rules of law and enforcement policies.

2. Recent Truth in Lending Act litigation ("Rodash")

This legislation also addresses the United States Court of Appeals for the Eleventh Circuit's decision in *Rodash* v. *AIB Mortgage Co.*, 16 F.3d 1142 (11th Cir. 1994), a case involving the TILA. The TILA requires lenders to disclose credit terms to borrowers in a manner that allows them to compare objectively various credit products. For example, the TILA requires lenders to characterize certain charges associated with a loan as "finance charges" and requires them to aggregate all such charges into one "finance charge" to be disclosed at real estate closings. The TILA allows borrowers to rescind transactions even for technical violations of the disclosure provisions of the statute.

On March 21, 1994, the court in *Rodash* v. *AIB*, ruled that certain taxes and fees (a $20 Federal Express delivery charge), including some fees that are assessed by third parties other than the lender, must be characterized as "finance charges" under the TILA. Because of this technical violation, the borrower was able to rescind the mortgage. When a mortgage is rescinded, the borrower is released from the mortgage lien leaving the lender with the unsecured loan moreover, the borrower is entitled to repayment of interest and all other non-principal payments made on the loan.

The Eleventh Circuit's ruling has sparked numerous class action lawsuits against lenders who have not characterized or disclosed such taxes and fees as "finance charges" in the past. It is argued that *Rodash* could have disastrous consequences for both organizers of mortgage loans and the secondary market. The potential cost of rescinding all refinanced mortgages made in the last three years (the time allowed under TILA to exercise the rescission right) has been estimated to be as high as $217 billion.

This issue was addressed by the House in the 103rd Congress by including the necessary corrective legislative language in a bill to amend the FCRA. That language, which was passed as part of H.R. 5178, would have expressly exempted from the definition of "finance charge" the types of taxes and fees that the Eleventh Circuit

found objectionable. Although H.R. 5178 was passed by the House on November 5, 1994 by voice vote, it was not considered by the Senate.

On April 4, 1995, with bipartisan support, the House under a suspension of the rules passed H.R. 1380, "The Truth in Lending Class Action Relief Act of 1995." The Senate passed H.R. 1380 by unanimous consent on April 24, 1995. H.R. 1380 imposes a moratorium until October 1, 1995 on certain TILA class action certifications, including Rodash-style class actions brought in connection with first liens on real property or dwellings that constitute a refinancing or consolidation of a debt.

Again, this legislation reflects a bipartisan compromise. This legislation exempts a number of charges from inclusion in the "finance charge" and provides a tiered "tolerance" approach on finance charge miscalculations. The legislation clarifies the applicability of the three year right of rescission for material nondisclosure, and precludes rescission for certain first-lien refinances. The legislation also contains limitations on the liability of assignees and services of home mortgages. It provides retroactive relief from liability for certain errors in disclosures with respect to certain individual cases and class actions.

SUBTITLE B—COMMUNITY REINVESTMENT ACT AMENDMENTS

This legislation reaffirms the Community Reinvestment Act's (CRA) original intent to encourage financial institutions to reinvest in their communities, while not imposing comprehensive credit allocation dictates or unnecessary burdens on banks and savings associations. Under the current law, the CRA requires federal regulatory agencies to encourage financial institutions to meet the credit needs of their local communities consistent with the safe and sound operation of such institutions.

Institutions are examined for CRA compliance and given one of four ratings: (i) "substantial noncompliance", (ii) "needs to improve", (iii) "satisfactory", or (iv) "outstanding." Agencies consider these ratings when institutions apply to charter a bank or savings association, to relocate or establish a deposit facility, or to merge, consolidate or acquire assets of another institution.

Enacted as part of the Housing and Community Development Act of 1977, the CRA was seen as a way to combat urban decay that was blamed in part on redlining (the practice of financial institutions intentionally not lending to certain neighborhoods or parts of a community). CRA was premised on the view that regulated institutions have a continuing obligation to meet the credit needs of their local communities in exchange for deposit insurance and a government charter.

This legislation is designed to respond to many of the concerns that have been raised about the CRA and that were not addressed in the new inter-agency regulations. First, the legislation reemphasizes the original intent of the CRA not to impose added regulatory burden by explicitly prohibiting additional record-keeping or reporting requirements unless such requirements reduce regulatory burden.

Second, recognizing the inordinate regulatory impact of CRA compliance on small, community institutions and the fact that

these institutions must meet the credit needs of their community in order to survive, the legislation permits institutions with less than $250 million in assets to self-certify compliance with the CRA in lieu of receiving an agency CRA evaluation. In general, banks with assets of $250 million or less typically do not have the resources for a full time CRA officer and cannot achieve the economies of scale in compliance efforts that billion dollar banks can achieve in developing and implementing CRA programs. The reasonableness of an institution's self-certification would be assessed during that institution's safety and soundness examination and would be based on information contained in the institution's public notice. Interested parties would be able to comment on an institution's performance and all comments would be maintained in the institution's public file. In addition, the legislation exempts an institution if it and its holding company in the aggregate have assets of $100 million or less from the requirements of the CRA. In rural communities, in particular, small banks lend to their community out of necessity as their continued existence depends upon a strong thriving community. In essence, small banks are already doing what the CRA requires, that is lending to their entire community.

Third, for institutions with assets of $250 million or greater, the appropriate federal banking agency would still perform a full CRA evaluation of the institution. The inter-agency regulations adopted in April would still be applicable. The legislation, however, further reforms the CRA for large institutions by establishing a new mechanism for community input into an institution's CRA examination and further provides that CRA ratings for institutions receiving a "satisfactory" or "outstanding," would be conclusive until the next examination.

Under the present CRA system, all too often banks find that they do not hear from community advocates until the bank files a merger or acquisition application. Because of the delay and cost these protests add to the application process, many community groups have found it a highly effective method of "encouraging" institutions to enter into significant lending agreements in exchange for dropping the protest. Evidence suggests that CRA protests typically result in bank-sponsored targeted loan programs. The banks argue that they are being held "hostage" by community groups. The regulatory system is so flawed that even a bank with an "outstanding" CRA rating can find its CRA record challenged at the time it files an application.

This legislation, by providing a procedure for community groups to respond to the institution's record of meeting its community needs in connection with the institution's examination rather than at the application stage, ensures that examiners will focus on the community issues raised by interested parties and encourages continuous dialogue between the institutions and the communities in which they serve.

Fourth, in addition to the community comment period being moved from the application process to the CRA examination stage, the legislation also requires that an institution's CRA performance be assessed as part of, and at the same time as, the overall evaluation of the institutions. For those institutions that do not receive a satisfactory or outstanding rating, the regulators may take into

account the institution's CRA record when evaluation the institution's condition. In addition, the institution's CFA rating may be determinative of whether or not an institution can take advantage of other benefits provided in law such as the streamlined applications procedures. This approach is more systematic and less disruptive to the business of banking.

SUBTITLE C—CONSUMER BANKING REFORMS—THE TRUTH IN SAVINGS ACT

Enacted in 1991, the Truth in Savings Act (TISA) was intended to allow consumers to make a "meaningful comparison between competing claims of depository institutions with regard to deposit accounts." Currently, under the TISA, financial institutions are required to disclose fees, interest rates, an annual percentage yield (APY) and other account terms through schedules and periodic disclosures for all checking and interest-bearing accounts they offer. A bank is subject to civil liability provisions if it fails to follow the strict and complicated disclosure requirements.

Unfortunately, the disclosure requirements under TISA have caused depository institutions and bank regulators more compliance problems than they have provided useful information to savers. As was noted in testimony before the Subcommittee on Financial Institutions and Consumer Credit, it is ironic that a law aimed at providing consumers adequate information about interest rates in a simple understandable form, requires more than 200 pages of rules, covering 56 pages in the Federal Register.

Instead of providing savers a better opportunity to compare "apples with apples" when choosing among a wide array of savings accounts, the Act and its implementing regulations have limited the kinds of accounts banks can offer and created a situation where savers are comparing "apples with oranges." A January 1995 Federal Reserve study indicated that the TISA has not enhanced consumer awareness.

H.R. 1858 addresses these concerns by eliminating certain provisions of the TISA which have caused the most compliance problems, such as the requirement to disclose an APY. The legislation does maintain, however, the beneficial provisions of the Act which require disclosure of fees, penalties, charges and the simple interest rate when an account is opened and when there is a change in terms relating to the required disclosures.

SUBTITLE D—EQUAL CREDIT OPPORTUNITY ACT AMENDMENTS

The goal of fair lending laws is to ensure that credit is not denied based on an individual's race, national origin, sex or age. One way to ensure that illegal discrimination is eradicated is to enlist the help of financial institutions in identifying and correcting discriminatory behavior. This legislation establishes a privilege for lenders who self-test for compliance with the ECOA and the FHA from having such tests used against them in any proceeding or civil action brought under these Acts where the lender has identified discriminatory practices and has taken appropriate corrective actions. It further grants Federal banking regulators discretionary authority to refer fair lending problems to the Attorney General or the Secretary of HUD under certain circumstances.

SUBTITLE E—CONSUMER LEASING ACT AMENDMENTS

The purpose of this subtitle is to assure simple, meaningful disclosure of leasing terms to enable a consumer to comparison shop for leasing arrangements and to be protected from inaccurate and unfair leasing practices. The legislation instructs the Federal Reserve Board to address consumer leasing issues through regulation and requires the Board to publish model disclosure forms.

TITLE II—STREAMLINING GOVERNMENT REGULATIONS

SUBTITLE A—REGULATORY APPROVAL ISSUES

In general, this title builds on the regulatory relief effort begun in the Riegle Community Development and Regulatory Improvement Act of 1994, which was enacted into law in the 103rd Congress. H.R. 1858 eliminates a number of routine, but costly procedures and changes a number of overlapping and unnecessary requirements in current law, such as prior approval for the establishment of a domestic branch by institutions that operate safely and soundly. It also establishes expedited procedures for bank holding companies which are available only to companies that are well capitalized and well managed.

Additionally, the title also removes per-branch capital requirements without affecting the consolidated capital requirements otherwise applicable to banks and amends the Depository Management Interlocks Act to allow sharing of management officials between small institutions in situations in which there would be no competitive impact. Finally, the legislation eliminates branch applications for automated teller machines (ATMs) and other duplicative approval requirements pertaining to mergers and divestitures and investments in bank premises as long as the investment does not exceed 150% of capital.

SUBTITLE B—STREAMLINING OF GOVERNMENT REGULATIONS

1. Branch closures

The provisions included in this legislation substantially mirror the federal regulators' interagency policy statement on branch closings and would reduce regulatory burden by eliminating the need to give prior notice of decisions to close automated teller machines, to close or relocate branches that are within 2.5 miles of another branch of the same institution, and to close certain branches acquired through mergers.

2. Insider lending

This legislation makes minor changes to requirements governing insider lending. Specifically, the legislation amends the Federal Reserve Act to allow insiders of financial institutions to qualify for employee-wide benefit plans offered by their institutions. Additionally, the legislation allows executive officers to be eligible for home equity loans and loans secured by readily marketable assets but only within established limitations on amounts and on competitive terms. The legislation also removes unnecessary restrictions on loans to executive officers or directors of affiliates that represent less than ten percent of the assets of the holding company if the

officers or directors do not participate in a major policymaking role in the bank.

3. Insurance activities of national banks and bank holding companies

The legislation includes a restriction on the power of the Office of the Comptroller of the Currency (OCC) to grant new insurance powers without rolling back the status quo. It also attends the Bank Holding Company Act (BHCA) to allow affiliations between banks and insurance companies under a holding company structure in accordance with state insurance laws. Such affiliations would be delayed until March 30, 1997. Additionally, national banks would be permitted to sell insurance within empowerment zones, subject to state regulation.

TITLE III—LENDER LIABILITY

Title III provides clarity to the issue of liability of lenders, fiduciaries, and government agencies under Federal environmental laws. This clarification resolves the uncertainty of existing exemptions promulgated by the Environmental Protection Agency and, subsequently, overturned by judicial determination. The Court in *United States* v. *Fleet Factors Corporation,* 901 F.2d 1550 (11th Cir. 1990), *cert. denied,* 498 U.S. 1046 (1991) decided that a lender could be held liable for the costs of any corrective or response action when the lender has the mere capacity to influence the borrower's treatment of hazardous waste. In addition, in *United States* v. *Maryland Bank & Trusts Co.,* 632 F. Supp. 573 (D. Md. 1986), the Court held a lender liable for foreclosing on a contaminated property and later disposing of the property through sale. As a result of such judicial opinions, lenders are hesitant to make loans to certain borrowers and to foreclose on properties. Therefore, Title III addresses the issue of how and to what extent a lender can be held under environmental laws.

Besides providing clarity to the liability issue, Title III provides encouragement and incentives to lenders and fiduciaries to protect the properties through environmental inspections and clean ups.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held two days of hearings on the CRA.

Testifying before the Subcommittee on March 8, 1995 were: The Honorable Joseph P. Kennedy II, U.S. House of Representatives; The Honorable Ricki Helfer, Chairman, Federal Deposit Insurance Corporation; The Honorable Eugene A. Ludwig, Comptroller of the Currency; The Honorable Jonathan L. Fiechter, Acting Director, Office of Thrift Supervision; The Honorable Lawrence Lindsey, Governor, Federal Reserve System; Mr. William A. Niskanen, Chairman, the Cato Institute; Ms. Lucy H. Griffin, Compliance Management Services; Ms. Cathy Bessant, Senior Vice President, Nations Bank; Mr. Warren Traiger, CRA Practitioner; Mr. Ned Brown, Financial Modeling Concepts.

Testifying before the Subcommittee on March 9, 1995 were: Mr. James Culberson, Jr., Chairman, First National Bank and Trust

Company; Mr. Tony Abbate, Chairman, Marketing Committee, Independent Bankers Association; Mr. Mark Milligan, America's Community Bankers; Mr. Benson F. Roberts, Vice President for Policy, Local Initiatives Support Corporation; Ms. Michelle Meier, Counsel, Government Affairs, Consumers Union; Ms. Gale Cincotta, Chairperson, National People's Action; Mr. John E. Taylor, President and C.E.O., National Community Reinvestment Coalition; Mr. Allen Fishbein, General Counsel, Center for Community Change; Rev. Charles R. Stith, National President, Organization for a New Equality.

The Subcommittee on Financial Institutions and Consumer Credit held four days of hearings on legislation to reduce the regulatory burdens being imposed on financial institutions, including H.R. 1362, introduced by Representative Bereuter.

Testifying before the Subcommittee on May 18, 1995, were: The Honorable Richard Carnell, Assistant Secretary of Financial Institutions, Department of the Treasury; The Honorable Susan B. Phillips, Governor, Federal Reserve Board; The Honorable Ricki Helfer, Chairman, Federal Deposit Insurance Corporation; The Honorable Eugene A. Ludwig, Comptroller of the Currency; The Honorable Jonathan L. Fiechter, Acting Director, Office of Thrift Supervision; The Honorable Nicholas P. Retsinas, Assistant Secretary of Housing, Department of Housing and Urban Development; The Honorable Catherine Ghiglieri, Texas Banking Commissioner, representing the Conference of State Bank Supervisors.

Testifying before the Subcommittee on May 23, 1995 were: Mr. James Culberson, Jr., American Bankers Association; Mr. Richard L. Mount, President, Independent Bankers Association of America; Mr. David Carson, America's Community Bankers; Mr. Ron Snellings, National Association of Federal Credit Unions; Ms. Nancy Pierce, Credit Union National Association, Inc.; Mr. H. Jay Sarles, Consumer Bankers Association; Mr. Alfred Pollard, Bankers Roundtable; Mr. John Davey, Mortgage Bankers Association of America; Mr. Rick Adams, National Association of Realtors; Mr. Larry Swank, National Association of Home Builders; Mr. Hank Williams, Real Estate Services Providers Council; Mr. Parker Kennedy, American Land Title Association.

Testifying before the Subcommittee on May 24, 1995 were: The Honorable Maxine Waters, U.S. House of Representatives; Mr. Bart Harvey, The Enterprise Foundation; Dr. Francine Justa, Executive Director, Neighborhood Housing Services of New York City; Dr. Steven Roberts, Regulatory Advisory Practice, KPMG Peat Marwick LLP; Dr. Robert Edelstein, Walter A. Haas School of Business, University of California at Berkeley; Ms. Michelle Meier, Government Affairs Counsel, Consumers Union; Ms. Frances Smith, Director, Consumers Alert; Ms. Madeline Houston, Passaic County Legal Aid; Ms. Tess Canja, American Association of Retired Persons; Ms. Maude Hurd, ACORN.

Testifying before the Subcommittee on June 8, 1995 were: Mr. Robert Elliott, President and C.E.O., Household Finance Corporation on behalf of the American Financial Services Association; Mr. Harley Bergmeyer, President, Saline State Bank; Mr. Wayne Holsted, Chairman and Chief Counsel, Northwest Title and Escrow; Mr. Eric Carlsen, Senior Vice President, Frontier Savings

Bank; Mr. Richard Roberto, Vice President, European American Bank; Mr. Stanley Lowe, First Representative, Pittsburgh Community Reinvestment Group.

COMMITTEE CONSIDERATION AND VOTES

(Rule XI, Clause 2(l)(2)(B))

On June 21, 22, 27, and 28, 1995, the Committee met in open session to mark up regulatory burden relief legislation. The Committee considered as original text for purposes of amendment a Committee Print which incorporated the provisions of H.R. 1362 as reported by the Subcommittee on Financial Institutions and Consumer Credit and a provision placing a moratorium on the authority of the Comptroller of the Currency to allow new insurance powers for national banks.

During the markup, the Committee approved, by recorded vote, 18 amendments to the Committee Print. The Committee also defeated, by recorded vote, 14 amendments. The following amendments were adopted by recorded vote.

An amendment offered by Mrs. Roukema and Mr. Bereuter making a number of clarifications to Title I of the Committee Print. Pages 1–9 of the amendment which make a number of changes to the RESPA and the TILA, including the transfer of rulemaking authority for all disclosure aspects of the RESPA to the Federal Reserve Board, passed 27–11.

YEAS	NAYS
Mr. Leach	Mr. LaFalce
Mr. McCollum	Mr. Vento
Mrs. Roukema	Mrs. Maloney
Mr. Bereuter	Ms. Roybal-Allard
Mr. Roth	Mr. Barrett, (WI)
Mr. Baker, (LA)	Ms. Velázquez
Mr. Lazio	Mr. Wynn
Mr. Bachus	Mr. Fields, (LA)
Mr. Castle	Mr. Watt
Mr. King	Mr. Hinchey
Mr. Royce	Mr. Bentsen
Mr. Weller	
Mr. Hayworth	
Mr. Metcalf	
Mr. Bono	
Mr. Ney	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. Orton	

Page 10 of the amendment which requires federal bank regulators to ensure that their examiners consult with each other and to consider appointing an examiner in charge for all agency exams passed 38–0.

YEAS	NAYS
Mr. Leach	
Mr. McCollum	
Mrs. Roukema	
Mr. Bereuter	
Mr. Roth	
Mr. Baker, (LA)	
Mr. Lazio	
Mr. Bachus	
Mr. Castle	
Mr. King	
Mr. Royce	
Mr. Weller	
Mr. Hayworth	
Mr. Metcalf	
Mr. Bono	
Mr. Ney	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. LaFalce	
Mr. Vento	
Mr. Orton	
Mrs. Maloney	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Ms. Velázquez	
Mr. Wynn	
Mr. Fields, (LA)	
Mr. Watt	
Mr. Hinchey	
Mr. Bentsen	

Pages 11–12 of the amendment which clarify the effective date of the amendments made to the TISA passed 39–0.

YEAS	NAYS
Mr. Leach	
Mr. McCollum	
Mrs. Roukema	
Mr. Bereuter	
Mr. Roth	
Mr. Baker, (LA)	
Mr. Lazio	
Mr. Bachus	
Mr. Castle	
Mr. King	
Mr. Royce	
Mr. Weller	
Mr. Hayworth	
Mr. Metcalf	
Mr. Bono	
Mr. Ney	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. LaFalce	
Mr. Vento	
Mr. Orton	
Mr. Sanders	
Mrs. Maloney	
Mr. Gutierrez	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Mr. Velázquez	
Mr. Wynn	
Mr. Fields, (LA)	
Mr. Watt	
Mr. Hinchey	
Mr. Bentsen	

Page 13 of the amendment which clarifies the burden of proof for unauthorized transfers remain on the creditors passed 30–10.

YEAS	NAYS
Mr. Leach	Mr. LaFalce
Mr. McCollum	Mr. Vento
Mrs. Roukema	Mr. Sanders
Mr. Bereuter	Mrs. Maloney
Mr. Roth	Mr. Gutierrez
Mr. Baker, (LA)	Ms. Velázquez
Mr. Lazio	Mr. Wynn
Mr. Bachus	Mr. Fields, (LA)
Mr. King	Mr. Watt
Mr. Royce	Mr. Hinchey
Mr. Lucas	
Mr. Weller	
Mr. Hayworth	
Mr. Metcalf	
Mr. Bono	
Mr. Ney	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. Kanjorski	
Mr. Orton	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Mr. Bentsen	

Page 14 of the amendment which makes a number of changes concerning consumer leases, including the placing of statutory penalties for creditors under the Consumer Credit Protection Act passed 41–0.

YEAS	NAYS
Mr. Leach	
Mr. McCollum	
Mrs. Roukema	
Mr. Bereuter	
Mr. Roth	
Mr. Baker, (LA)	
Mr. Lazio	
Mr. Bachus	
Mr. Castle	
Mr. King	
Mr. Royce	
Mr. Lucas	
Mr. Weller	
Mr. Hayworth	
Mr. Metcalf	
Mr. Bono	
Mr. Ney	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. LaFalce	
Mr. Vento	
Mr. Kanjorski	
Mr. Orton	
Mr. Sanders	
Mrs. Maloney	
Mr. Gutierrez	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Ms. Velázquez	
Mr. Wynn	
Mr. Fields, (LA)	
Mr. Watt	
Mr. Hinchey	
Mr. Bentsen	

An amendment offered by Mr. Roth which prevents the CRA regulations from requiring financial institutions from making loans or other agreements to an uncreditworthy person, business, organization, or any other entity that would jeopardize safety and soundness of the subject lending institutions was passed 25–13.

YEAS	NAYS
Mr. Leach	Mr. Ney
Mr. McCollum	Mr. Fox
Mrs. Roukema	Mr. Watts
Mr. Bereuter	Mr. LaFalce
Mr. Roth	Mr. Kennedy
Mr. Baker, (LA)	Mr. Mfume
Mr. Bachus	Ms. Waters
Mr. King	Mr. Sanders
Mr. Royce	Mr. Roybal-Allard
Mr. Weller	Ms. Velázquez
Mr. Hayworth	Mr. Wynn
Mr. Metcalf	Mr. Fields, (LA)
Mr. Bono	Mr. Hinchey
Mr. Ehrlich	
Mr. Barr	
Mr. Cremeans	
Mr. Stockman	
Mr. LoBiondo	
Mrs. Kelly	
Mr. Vento	
Mr. Kanjorski	
Mr. Barrett, (WI)	
Mr. Watt	
Mr. Ackerman	
Mr. Bentsen	

Present: Mr. Heineman.

An amendment offered by Mr. Weller which strikes the requirement that regulated financial institutions with $100 million or less in assets be outside of a metropolitan statistical area in order to be exempt from CRA examination requirements was passed 23–16.

YEAS	NAYS
Mr. Leach	Mr. Bereuter
Mr. McCollum	Mr. Vento
Mrs. Roukema	Mr. Schumer
Mr. Roth	Mr. Frank
Mr. Baker, (LA)	Mr. Kennedy
Mr. Bachus	Ms. Waters
Mr. Castle	Mr. Sanders
Mr. King	Mr. Gutierrez
Mr. Royce	Ms. Roybal-Allard
Mr. Weller	Mr. Barrett, (WI)
Mr. Hayworth	Ms. Velázquez
Mr. Metcalf	Mr. Wynn
Mr. Bono	Mr. Fields, (LA)
Mr. Ney	Mr. Watt
Mr. Ehrlich	Mr. Hinchey
Mr. Barr	Mr. Bentsen
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	

An amendment offered by Mr. McCollum which strikes assessment of an institution's CRA record during the applications process for a deposit facility and instead requires the CRA record to be included in the assessment of overall evaluation of the condition of the institution was passed 25–17.

YEAS	NAYS
Mr. Leach	Mr. Vento
Mr. McCollum	Mr. Frank
Mrs. Roukema	Mr. Kanjorski
Mr. Bereuter	Mr. Kennedy
Mr. Roth	Ms. Waters
Mr. Lazio	Mr. Orton
Mr. Bachus	Mr. Sanders
Mr. Castle	Mrs. Maloney
Mr. King	Mr. Gutierrez
Mr. Royce	Ms. Roybal-Allard
Mr. Lucas	Mr. Barrett, (WI)
Mr. Weller	Ms. Velázquez
Mr. Hayworth	Mr. Wynn
Mr. Metcalf	Mr. Fields, (LA)
Mr. Bono	Mr. Watt
Mr. Ney	Mr. Hinchey
Mr. Ehrlich	Mr. Bentsen
Mr. Barr	
Mr. Cremeans	
Mr Fox	
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mr. Kelly	

An amendment offered by Mr. Schumer, Ms. Maloney and Mr. Vento which deletes the provision that modified liability provisions under the EFTA for the unauthorized use of electronic fund transfers was passed 24–18.

YEAS	NAYS
Mr. Leach	Mrs. Roukema
Mr. Royce	Mr. Bereuter
Mr. Heineman	Mr. Baker, (LA)
Mr. Stockman	Mr. Lazio
Mr. Watts	Mr. Bachus
Mrs. Kelly	Mr. Castle
Mr. LaFalce	Mr. King
Mr. Vento	Mr. Lucas
Mr. Schumer	Mr. Weller
Mr. Frank	Mr. Hayworth
Mr. Kennedy	Mr. Bono
Mr. Flake	Mr. Ney
Ms. Waters	Mr. Ehrlich
Mr. Sanders	Mr. Barr
Mrs. Maloney	Mr. Chrysler
Ms. Roybal-Allard	Mr. Cremeans
Mr. Barrett, (WI)	Mr. Fox
Ms. Velázquez	Mr. LoBiondo
Mr. Wynn	
Mr. Fields, (LA)	
Mr. Watt	
Mr. Hinchey	
Mr. Ackerman	
Mr. Bentsen	

An amendment offered by Mr. Schumer and Mr. Vento which eliminates the provisions that modified the liability provisions under the TILA for the unauthorized use of credit cards was passed 23–21.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mr. Royce	Mrs. Roukema
Mr. Heineman	Mr. Bereuter
Mr. Stockman	Mr. Baker, (LA)
Mr. Watts	Mr. Lazio
Mrs. Kelly	Mr. Bachus
Mr. LaFalce	Mr. Castle
Mr. Vento	Mr. King
Mr. Schumer	Mr. Lucas
Mr. Kennedy	Mr. Weller
Mr. Flake	Mr. Hayworth
Ms. Waters	Mr. Bono
Mr. Sanders	Mr. Ney
Mrs. Maloney	Mr. Ehrlich
Ms. Roybal-Allard	Mr. Barr
Mr. Barrett, (WI)	Mr. Chrysler
Ms. Velázquez	Mr. Cremeans
Mr. Wynn	Mr. Fox
Mr. Fields, (LA)	Mr. LoBiondo
Mr. Watt	Mr. Frank
Mr. Hinchey	Mr. Orton
Mr. Ackerman	
Mr. Bentsen	

An amendment to Mr. Leach's amendment which strikes a requirement that would have required agency concurrence in Department of Justice enforcement actions under the fair lending cases was passed 24–20.

YEAS	NAYS
Mr. Bereuter	Mr. Leach
Mr. Ney	Mr. McCollum
Mr. Fox	Mrs. Roukema
Mr. Watts	Mr. Baker, (LA)
Mrs. Kelly	Mr. Lazio
Mr. LaFalce	Mr. Bachus
Mr. Vento	Mr. King
Mr. Frank	Mr. Royce
Mr. Kennedy	Mr. Lucas
Mr. Flake	Mr. Weller
Mr. Mfume	Mr. Hayworth
Ms. Waters	Mr. Metcalf
Mr. Orton	Mr. Bono
Mr. Sanders	Mr. Ehrlich
Mrs. Maloney	Mr. Barr
Mr. Gutierrez	Mr. Chrysler
Ms. Roybal-Allard	Mr. Cremeans
Mr. Barrett, (WI)	Mr. Heineman
Ms. Velázquez	Mr. Stockman
Mr. Wynn	Mr. LoBiondo
Mr. Watt	
Mr. Hinchey	
Mr. Ackerman	
Mr. Bentsen	

An amendment offered by Mr. Hinchey which requires that in order to receive protection under the ECOA, credit scoring systems cannot have a disparate impact on a protected class unless the criterion used is justified by business necessity and a no less discriminatory alternative is available was passed 29–17.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mrs. Roukema	Mr. Baker, (LA)
Mr. Bereuter	Mr. Lazio
Mr. Castle	Mr. Bachus
Mr. Weller	Mr. King
Mr. Fox	Mr. Royce
Mr. LoBiondo	Mr. Lucas
Mr. Watts	Mr. Hayworth
Mrs. Kelly	Mr. Metcalf
Mr. LaFalce	Mr. Bono
Mr. Vento	Mr. Ney
Mr. Frank	Mr. Ehrlich
Mr. Kanjorski	Mr. Barr
Mr. Kennedy	Mr. Chrysler
Mr. Flake	Mr. Cremeans
Mr. Mfume	Mr. Heineman
Ms. Waters	Mr. Stockman
Mr. Orton	
Mrs. Maloney	
Mr. Gutierrez	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Ms. Velázquez	
Mr. Wynn	
Mr. Fields, (LA)	
Mr. Watt	
Mr. Hinchey	
Mr. Ackerman	
Mr. Bentsen	

An amendment offered by Mr. Hinchey which strikes the prohibition in the legislation which would have restricted the use of disparate impact evidence in enforcing fair lending laws was passed 32–15.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mrs. Roukema	Mr. Baker, (LA)
Mr. Bereuter	Mr. Bachus
Mr. Lazio	Mr. King
Mr. Castle	Mr. Royce
Mr. Metcalf	Mr. Lucas
Mr. Fox	Mr. Weller
Mr. Heineman	Mr. Hayworth
Mr. LoBiondo	Mr. Bono
Mr. Watts	Mr. Ney
Mrs. Kelly	Mr. Ehrlich
Mr. LaFalce	Mr. Barr
Mr. Vento	Mr. Chrysler
Mr. Frank	Mr. Cremeans
Mr. Kanjorski	Mr. Stockman
Mr. Kennedy	
Mr. Flake	
Mr. Mfume	
Ms. Waters	
Mr. Orton	
Mr. Sanders	
Mrs. Maloney	
Mr. Gutierrez	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Ms. Velázquez	
Mr. Wynn	
Mr. Fields, (LA)	
Mr. Watt	
Mr. Hinchey	
Mr. Ackerman	
Mr. Bentsen	

An amendment offered by Mr. Castle which makes clarifications to the OCC insurance moratorium language contained in Mr. Leach's amendment was passed 40–2.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mrs. Roukema	Mr. Kanjorski
Mr. Bereuter	
Mr. Roth	
Mr. Baker, (LA)	
Mr. Lazio	
Mr. Bachus	
Mr. Castle	
Mr. King	
Mr. Royce	
Mr. Lucas	
Mr. Hayworth	
Mr. metcalf	
Mr. Bono	
Mr. Ehrlich	
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. Gonzalez	
Mr. LaFalce	
Mr. Vento	
Mr. Schumer	
Mr. Frank	
Mr. Kennedy	
Mr. Mfume	
Ms. Waters	
Mrs. Maloney	
Mr. Gutierrez	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Ms. Velázquez	
Mr. Wynn	
Mr. Watt	
Mr. Bentsen	

An amendment offered by Mr. Baker, (LA), which amends section (4)(c)(8) of the BHCA to allow bank holding companies to own insurance companies in accordance with state insurance laws was passed 36–12.

YEAS	NAYS
Mrs. Roukema	Mr. Leach
Mr. Roth	Mr. McCollum
Mr. Baker, (LA)	Mr. Bereuter
Mr. Lazio	Mr. Weller
Mr. Bachus	Mr. Hayworth
Mr. Castle	Mr. Metcalf
Mr. King	Mr. Ney
Mr. Royce	Mr. Ehrlich
Mr. Lucas	Mr. LoBiondo
Mr. Bono	Mrs. Kelly
Mr. Barr	Ms. Waters
Mr. Chrysler	Mr. Sanders
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. Stockman	
Mr. Watts	
Mr. Gonzalez	
Mr. LaFalce	
Mr. Vento	
Mr. Schumer	
Mr. Frank	
Mr. Kanjorski	
Mr. Kennedy	
Mr. Flake	
Mr. Mfume	
Mr. Orton	
Mrs. Maloney	
Mr. Gutierrez	
Ms. Roybal-Allard	
Mr. Barrett, (WI)	
Ms. Velázquez	
Mr. Wynn	
Mr. Watt	
Mr. Hinchey	
Mr. Bentsen	

An amendment offered by Mr. McCollum which strikes the provision putting restrictions on the ability of outside counsel and accountants to serve on a financial institution's board of directors was passed 27–17.

YEAS	NAYS
Mr. Leach	Mr. Gonzalez
Mr. McCollum	Mr. LaFalce
Mrs. Roukema	Mr. Vento
Mr. Bereuter	Mr. Schumer
Mr. Baker, (LA)	Mr. Kanjorski
Mr. Lazio	Mr. Kennedy
Mr. Bachus	Mr. Flake
Mr. Castle	Mr. Mfume
Mr. King	Ms. Waters
Mr. Royce	Mr. Orton
Mr. Lucas	Mrs. Maloney
Mr. Weller	Mr. Gutierrez
Mr. Hayworth	Ms. Roybal-Allard
Mr. Metcalf	Mr. Barrett, (WI)
Mr. Bono	Ms. Velázquez
Mr. Ney	Mr. Hinchey
Mr. Ehrlich	Mr. Bentsen
Mr. Barr	
Mr. Chrysler	
Mr. Cremeans	
Mr. Fox	
Mr. Heineman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. Wynn	
Mr. Watt	

The following amendments were defeated by recorded vote.

An amendment offered by Mr. Barrett, (WI), to Mr. Roth's amendment which strikes reference to uncreditworthy persons was defeated 16–25.

YEAS	NAYS
Mr. LaFalce	Mr. Leach
Mr. Vento	Mr. McCollum
Mr. Kanjorski	Mrs. Roukema
Mr. Kennedy	Mr. Bereuter
Mr. Mfume	Mr. Roth
Ms. Waters	Mr. Baker, (LA)
Mr. Sanders	Mr. Lazio
Ms. Roybal-Allard	Mr. Bachus
Mr. Barrett, (WI)	Mr. Castle
Ms. Velázquez	Mr. Royce
Mr. Wynn	Mr. Lucas
Mr. Fields, (LA)	Mr. Weller
Mr. Watt	Mr. Hayworth
Mr. Hinchey	Mr. Metcalf
Mr. Ackerman	Mr. Bono
Mr. Bentsen	Mr. Ney
	Mr. Ehrlich
	Mr. Barr
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly

An amendment offered by Mr. Kennedy which strikes the CRA subtitle was defeated 18–26.

YEAS	NAYS
Mr. Gonzalez	Mr. Leach
Mr. Vento	Mr. McCollum
Mr. Frank	Mrs. Roukema
Mr. Kanjorski	Mr. Bereuter
Mr. Kennedy	Mr. Roth
Mr. Flake	Mr. Lazio
Ms. Waters	Mr. Bachus
Mr. Sanders	Mr. Castle
Mrs. Maloney	Mr. King
Mr. Gutierrez	Mr. Royce
Ms. Roybal-Allard	Mr. Lucas
Mr. Barrett, (WI)	Mr. Weller
Ms. Velázquez	Mr. Hayworth
Mr. Wynn	Mr. Metcalf
Mr. Fields, (LA)	Mr. Bono
Mr. Watt	Mr. Ehrlich
Mr. Hinchey	Mr. Barr
Mr. Bentsen	Mr. Chrysler
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly
	Mr. Orton

An amendment offered by Mr. McCollum which raises the level of CRA self-certification from $25,000,000 to $1,000,000,000 was defeated 11–32.

YEAS	NAYS
Mr. McCollum	Mr. Leach
Mr. Roth	Mrs. Roukema
Mr. Baker, (LA)	Mr. Bereuter
Mr. Bachus	Mr. Lazio
Mr. King	Mr. Castle
Mr. Royce	Mr. Hayworth
Mr. Weller	Mr. Metcalf
Mr. Bono	Mr. Ney
Mr. Ehrlich	Mr. Cremeans
Mr. Barr	Mr. Heineman
Mr. Fox	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly
	Mr. Vento
	Mr. Schumer
	Mr. Frank
	Mr. Kanjorski
	Mr. Kennedy
	Mr. Flake
	Mr. Mfume
	Ms. Waters
	Mr. Orton
	Mr. Sanders
	Mr. Gutierrez
	Ms. Roybal-Allard
	Mr. Barrett, (WI)
	Ms. Velázquez
	Mr. Wynn
	Mr. Fields, (LA)
	Mr. Watt
	Mr. Hinchey
	Mr. Bensten

An amendment offered by Mr. McCollum which amends the CRA to bring it back to its original purpose by making redlining enforceable under the ECOA and the FHA was defeated 11–26.

YEAS	NAYS
Mr. McCollum	Mr. Leach
Mr. Roth	Mrs. Roukema
Mr. Bachus	Mr. Bereuter
Mr. King	Mr. Lazio
Mr. Royce	Mr. Castle
Mr. Lucas	Mr. Metcalf
Mr. Hayworth	Mr. Ney
Mr. Bono	Mr. Cremeans
Mr. Ehrlich	Mr. Fox
Mr. Barr	Mr. Heineman
Mr. Chrysler	Mr. LoBiondo
	Mr. Watts
	Mr. Vento
	Mr. Frank
	Mr. Kanjorski
	Mr. Kennedy
	Mr. Waters
	Mr. Orton
	Ms. Roybal-Allard
	Mr. Barrett, (WI)
	Ms. Velázquez
	Mr. Wynn
	Mr. Fields, (LA)
	Mr. Watt
	Mr. Hinchey
	Mr. Bensten

An amendment offered by Mr. Fields, (LA), which provides for "point of transaction" fee disclosures for all automated teller machine transactions was passed by a Voice Vote. A motion to reconsider the amendment was approved 18–17.

YEAS	NAYS
Mr. Leach	Mr. Bachus
Mr. Bereuter	Mr. Chrysler
Mr. Roth	Mr. LaFalce
Mr. Lazio	Mr. Vento
Mr. Castle	Mr. Schumer
Mr. King	Mr. Frank
Mr. Royce	Ms. Waters
Mr. Lucas	Mr. Orton
Mr. Weller	Mrs. Maloney
Mr. Hayworth	Ms. Roybal-Allard
Mr. Metcalf	Mr. Barrett, (WI)
Mr. Bono	Ms. Velázquez
Mr. Ehrlich	Mr. Wynn
Mr. Cremeans	Mr. Fields, (LA)
Mr. Heineman	Mr. Watt
Mr. Stockman	Mr. Hinchey
Mr. LoBiondo	Mr. Ackerman
Mrs. Kelly	

Mr. Fields' amendment was then defeated by a roll call vote of 21–21.

YEAS	NAYS
Mr. Bachus	Mr. Leach
Mr. Stockman	Mrs. Roukema
Mr. LaFalce	Mr. Bereuter
Mr. Vento	Mr. Roth
Mr. Schumer	Mr. Lazio
Mr. Frank	Mr. Castle
Mr. Kanjorski	Mr. King
Mr. Kennedy	Mr. Royce
Ms. Waters	Mr. Lucas
Mr. Orton	Mr. Weller
Mr. Sanders	Mr. Hayworth
Mrs. Maloney	Mr. Metcalf
Ms. Roybal-Allard	Mr. Bono
Mr. Barrett, (WI)	Mr. Ney
Ms. Velázquez	Mr. Ehrlich
Mr. Wynn	Mr. Barr
Mr. Fields, (LA)	Mr. Chrysler
Mr. Watt	Mr. Cremeans
Mr. Hinchey	Mr. Heineman
Mr. Ackerman	Mr. LoBiondo
Mr. Bentsen	Mrs. Kelly

An amendment offered by Mr. Kennedy which strikes the affiliate information sharing provision of the legislation was defeated 19–23.

YEAS	NAYS
Mr. Gonzalez	Mr. Leach
Mr. LaFalce	Mr. McCollum
Mr. Vento	Mrs. Roukema
Mr. Schumer	Mr. Bereuter
Mr. Frank	Mr. Bachus
Mr. Kennedy	Mr. Castle
Mr. Flake	Mr. King
Ms. Waters	Mr. Royce
Mr. Sanders	Mr. Lucas
Mrs. Maloney	Mr. Weller
Mr. Gutierrez	Mr. Hayworth
Ms. Roybal-Allard	Mr. Bono
Mr. Barrett, (WI)	Mr. Ney
Ms. Velázquez	Mr. Ehrlich
Mr. Wynn	Mr. Barr
Mr. Watt	Mr. Chrysler
Mr. Hinchey	Mr. Cremeans
Mr. Ackerman	Mr. Fox
Mr. Bentsen	Mr. Heineman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly
	Mr. Orton

An amendment offered by Ms. Waters which imposes a two-year moratorium on bank fee increases for accounts with an average daily balance below $3,000 was defeated 4–30.

YEAS	NAYS
Ms. Waters	Mr. Leach
Mr. Sanders	Mr. McCollum
Mr. Gutierrez	Mrs. Roukema
Ms. Roybal-Allard	Mr. Bereuter
	Mr. Baker, (LA)
	Mr. Lazio
	Mr. Bachus
	Mr. Castle
	Mr. King
	Mr. Royce
	Mr. Weller
	Mr. Hayworth
	Mr. Metcalf
	Mr. Bono
	Mr. Ney
	Mr. Ehrlich
	Mr. Barr
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly
	Mr. Frank
	Mr. Orton
	Mr. Barrett, (WI)
	Mr. Wynn
	Mr. Watt
	Mr. Hinchey
	Mr. Ackerman

An amendment offered by Mr. Bentsen which changes the CRA rating system was defeated 15–22.

YEAS	NAYS
Mr. Vento	Mr. Leach
Mr. Frank	Mr. McCollum
Mr. Kanjorski	Mrs. Roukema
Mr. Kennedy	Mr. Bereuter
Ms. Waters	Mr. Lazio
Mr. Orton	Mr. Bachus
Mr. Sanders	Mr. Castle
Ms. Roybal-Allard	Mr. King
Mr. Barrett, (WI)	Mr. Royce
Ms. Velázquez	Mr. Lucas
Mr. Wynn	Mr. Hayworth
Mr. Fields, (LA)	Mr. Metcalf
Mr. Watt	Mr. Bono
Mr. Hinchey	Mr. Ehrlich
Mr. Bentsen	Mr. Barr
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly

An amendment offered by Mr. Schumer and Mrs. Maloney which deletes provisions in the legislation modifying the current restrictions on insider lending was defeated 15–26.

YEAS	NAYS
Mr. LaFalce	Mr. Leach
Mr. Vento	Mr. McCollum
Mr. Schumer	Mrs. Roukema
Mr. Flake	Mr. Bereuter
Mr. Mfume	Mr. Baker, (LA)
Mr. Orton	Mr. Lazio
Mr. Sanders	Mr. Bachus
Mrs. Maloney	Mr. Castle
Ms. Roybal-Allard	Mr. King
Mr. Barrett, (WI)	Mr. Royce
Ms. Velázquez	Mr. Lucas
Mr. Wynn	Mr. Weller
Mr. Watt	Mr. Hayworth
Mr. Hinchey	Mr. Metcalf
Mr. Bentsen	Mr. Bono
	Mr. Ney
	Mr. Ehrlich
	Mr. Barr
	Mr. Chrysler
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly

An amendment offered by Mr. Schumer and Mrs. Maloney which deletes the provision in the legislation modifying the current statutory requirement that all members of bank audit committees be independent directors was defeated 20–20.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mr. Lazio	Mrs. Roukema
Mr. Castle	Mr. Bereuter
Mr. Royce	Mr. Roth
Mr. Metcalf	Mr. Baker, (LA)
Mr. Heineman	Mr. Bachus
Mrs. Kelly	Mr. King
Mr. LaFalce	Mr. Lucas
Mr. Vento	Mr. Weller
Mr. Schumer	Mr. Hayworth
Mr. Mfume	Mr. Bono
Mr. Orton	Mr. Ney
Mrs. Maloney	Mr. Ehrlich
Mr. Gutierrez	Mr. Barr
Ms. Roybal-Allard	Mr. Chrysler
Mr. Barrett, (WI)	Mr. Cremeans
Ms. Velázquez	Mr. Fox
Mr. Wynn	Mr. Stockman
Mr. Watt	Mr. LoBiondo
Mr. Bentsen	Mr. Watts

An amendment offered by Mr. Vento which strikes section 234 of the legislation modifying the culpability standards for outside directors was defeated 17–24.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mrs. Roukema	Mr. Bereuter
Mr. Gonzalez	Mr. Roth
Mr. LaFalce	Mr. Baker, (LA)
Mr. Vento	Mr. Lazio
Mr. Frank	Mr. Bachus
Mr. Kanjorski	Mr. Castle
Mr. Kennedy	Mr. King
Mr. Flake	Mr. Royce
Mr. Orton	Mr. Lucas
Mrs. Maloney	Mr. Weller
Ms. Roybal-Allard	Mr. Hayworth
Mr. Barrett, (WI)	Mr. Bono
Ms. Velázquez	Mr. Ney
Mr. Watt	Mr. Ehrlich
Mr. Hinchey	Mr. Barr
Mr. Bentsen	Mr. Chrysler
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. Stockman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly

An amendment offered by Mr. Kennedy which strikes section 238 concerning second mortgages was defeated by 21–23.

YEAS	NAYS
Mr. Leach	Mr. McCollum
Mr. Lazio	Mrs. Roukema
Mr. Metcalf	Mr. Bereuter
Mr. Heineman	Mr. Roth
Mr. LoBiondo	Mr. Baker, (LA)
Mr. Gonzalez	Mr. Bachus
Mr. LaFalce	Mr. Castle
Mr. Vento	Mr. King
Mr. Frank	Mr. Royce
Mr. Kennedy	Mr. Lucas
Mr. Flake	Mr. Weller
Ms. Waters	Mr. Hayworth
Mr. Sanders	Mr. Bono
Mr. Gutierrez	Mr. Ney
Ms. Roybal-Allard	Mr. Ehrlich
Mr. Barrett, (WI)	Mr. Barr
Ms. Velázquez	Mr. Chrysler
Mr. Wynn	Mr. Cremeans
Mr. Watt	Mr. Fox
Mr. Ackerman	Mr. Stockman
Mr. Bentsen	Mr. Watts
	Mrs. Kelly
	Mr. Orton

An amendment offered by Mr. Bachus which makes a number of reforms to the FDCPA was defeated 19–26.

YEAS	NAYS
Mr. Bereuter	Mr. McCollum
Mr. Roth	Mrs. Roukema
Mr. Baker, (LA)	Mr. Royce
Mr. Lazio	Mr. Fox
Mr. Bachus	Mr. LoBiondo
Mr. Castle	Mr. Watts
Mr. King	Mrs. Kelly
Mr. Lucas	Mr. Gonzalez
Mr. Weller	Mr. LaFalce
Mr. Hayworth	Mr. Vento
Mr. Metcalf	Mr. Schumer
Mr. Bono	Mr. Frank
Mr. Ney	Mr. Kennedy
Mr. Ehrlich	Mr. Mfume
Mr. Barr	Ms. Waters
Mr. Chrysler	Mr. Orton
Mr. Cremeans	Mr. Sanders
Mr. Heineman	Mrs. Maloney
Mr. Stockman	Mr. Gutierrez
	Ms. Roybal-Allard
	Mr. Barrett, (WI)
	Ms. Velázquez
	Mr. Wynn
	Mr. Watt
	Mr. Hinchey
	Mr. Bentsen

Present: Mr. Leach.

An amendment offered by Mr. Vento which was an amendment in the nature of a substitute was defeated 13–24.

YEAS	NAYS
Mr. LaFalce	Mr. Leach
Mr. Vento	Mr. McCollum
Mr. Frank	Mrs. Roukema
Mr. Kennedy	Mr. Bereuter
Mr. Flake	Mr. Roth
Mr. Mfume	Mr. Baker, (LA)
Ms. Waters	Mr. Bachus
Mr. Sanders	Mr. King
Mr. Gutierrez	Mr. Royce
Mr. Barrett, (WI)	Mr. Lucas
Mr. Watt	Mr. Weller
Mr. Ackerman	Mr. Hayworth
Mr. Bentsen	Mr. Metcalf
	Mr. Bono
	Mr. Ney
	Mr. Ehrlich
	Mr. Barr
	Mr. Chrysler
	Mr. Cremeans
	Mr. Fox
	Mr. Heineman
	Mr. LoBiondo
	Mr. Watts
	Mrs. Kelly

After adopting the Committee Print, as amended, H.R. 1858 was called up for committee consideration. A motion to strike everything after the enacting clause in H.R. 1858 and insert in lieu thereof the Committee Print, as amended, was approved by Voice Vote.

A motion to adopt H.R. 1858 and favorably report H.R. 1858, as amended, to the House was approved 27–23.

YEAS	NAYS
Mr. Leach	Mr. Gonzalez
Mr. McCollum	Mr. LaFalce
Mrs. Roukema	Mr. Vento
Mr. Bereuter	Mr. Schumer
Mr. Roth	Mr. Frank
Mr. Baker, (LA)	Mr. Kanjorski
Mr. Lazio	Mr. Kennedy
Mr. Bachus	Mr. Flake
Mr. Castle	Mr. Mfume
Mr. King	Ms. Waters
Mr. Royce	Mr. Orton
Mr. Lucas	Mr. Sanders
Mr. Weller	Mrs. Maloney
Mr. Hayworth	Mr. Gutierrez
Mr. Metcalf	Ms. Roybal-Allard
Mr. Bono	Mr. Barrett, (WI)
Mr. Ney	Ms. Velázquez
Mr. Ehrlich	Mr. Wynn
Mr. Barr	Mr. Fields, (LA)
Mr. Chrysler	Mr. Watt
Mr. Cremeans	Mr. Hinchey
Mr. Fox	Mr. Ackerman
Mr. Heineman	Mr. Bentsen
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	

A motion to give power to the Chair to request to go to conference was approved 28–20.

YEAS	NAYS
Mr. Leach	Mr. Gonzalez
Mr. McCollum	Mr. Vento
Mrs. Roukema	Mr. Kanjorski
Mr. Bereuter	Mr. Kennedy
Mr. Roth	Mr. Flake
Mr. Baker, (LA)	Mr. Mfume
Mr. Lazio	Ms. Waters
Mr. Bachus	Mr. Orton
Mr. Castle	Mr. Sanders
Mr. King	Mrs. Maloney
Mr. Royce	Mr. Gutierrez
Mr. Lucas	Ms. Roybal-Allard
Mr. Weller	Mr. Barrett, (WI)
Mr. Hayworth	Ms. Velázquez
Mr. Metcalf	Mr. Wynn
Mr. Bono	Mr. Fields, (LA)
Mr. Ney	Mr. Watt
Mr. Ehrlich	Mr. Hinchey
Mr. Barr	Mr. Ackerman
Mr. Chrysler	Mr. Bentsen
Mr. Cremeans	Mr. Fox
Mr. Heineman	
Mr. Stockman	
Mr. LoBiondo	
Mr. Watts	
Mrs. Kelly	
Mr. LaFalce	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings and recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI and clause 4(c)(2) of rule X of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

The cost estimate pursuant to Clause 2(l)(3)(C) of rule XI, of the Rules of the House of Representatives and Section 403 of the Congressional Budget Act of 1974 has been requested, but had not been prepared as of the filing of Part I of this report. The estimate will be filed at a future date.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONGRESSIONAL ACCOUNTABILITY ACT

The reporting requirement under section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1) is inapplicable because this legislation does not relate to terms and conditions of employment or access to public services or accommodations.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 1858 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS

TITLE I—REDUCTION IN GOVERNMENT OVERREGULATION

SUBTITLE A—THE HOME MORTGAGE PROCESS

SECTION 101. REGULATORY AUTHORITY OVER DISCLOSURES AND ESCROW ACCOUNTS UNDER RESPA TRANSFERRED TO FEDERAL RESERVE BOARD

Section 101 transfers rulemaking authority for all disclosure provisions of the RESPA from HUD to the Federal Reserve Board but maintains at HUD rulemaking authority regarding certain real estate settlement services under the RESPA including those prohibiting kickbacks and unearned fees. This section also clarifies that the purpose of RESPA is to effect changes in the residential real estate settlement process that will result in the elimination of kickbacks or referral fees without directly regulating settlement service prices or wages paid to bona fide employees that are not designed as a subterfuge to facilitate kickbacks among affiliated companies. Section 101 also revises the rulemaking process under the RESPA to incorporate negotiated rulemaking procedures. The section distributes administrative enforcement of Section 8 and 9 of RESPA among HUD (for non-financial institutions) and the appropriate federal financial institution regulators (for financial entities); enforcement authority for disclosure requirements is shared among the Federal Reserve Board and the Federal depository institution regulators.

In addition, the section requires interagency cooperation in establishing uniform penalties and enforcement guidelines. The Federal Reserve Board is given the authority to determine the appro-

priate regulator in cases of more than one potential regulator. The Director of the Office of Thrift Supervision (OTS) is given this same authority for savings and loan holding companies. In cases of joint ventures between a non-banking entity and a banking entity, the section provides that the banking entity's regulator will be the regulator of the joint venture. The section provides that liability for criminal penalties under the RESPA exists only for wilful violations (current law allows criminal penalties for unintentional violations). The section redesignates "Controlled Business Arrangements" as "Affiliated Business Arrangements."

SECTION 102. SIMPLIFICATION AND UNIFICATION OF DISCLOSURES REQUIRED UNDER RESPA AND TILA FOR MORTGAGE TRANSACTIONS

Section 102 directs the Federal Reserve Board to eliminate duplicative disclosure requirements that require unnecessary, confusing and costly paperwork which obscures important consumer information. This section requires the Federal Reserve Board to take swift action in this area to (1) simplify disclosures provided under RESPA and TILA, including the timing of the disclosures, and (2) provide a single format for RESPA and TILA disclosures. In the event it is necessary to adopt regulations to implement the provisions of this section, the Board is required to publish such proposed regulations within three months of the date of enactment of this legislation.

SECTION 103. INCREASED REGULATORY FLEXIBILITY UNDER THE TRUTH IN LENDING ACT

Section 103 (a) and (b) grants the Board statutory authority to exempt various transactions from coverage under TILA. The Board is directed to exempt from the TILA any class of transaction for which coverage under the TILA does not provide a measurable benefit to consumers in the form of useful information or protection. The Board is encouraged to exercise its discretionary authority granted under Sections 102 and 103 of H.R. 1858 to reduce the regulatory burdens and costs associated with the credit-granting process.

SECTION 104. REDUCTIONS IN RESPA REGULATORY BURDENS; CLARIFYING AMENDMENTS

Section 104 amends the RESPA to require disclosure at the time of application for a loan whether servicing of the loan may be assigned, sold or transferred. It also eliminates subordinate mortgages from RESPA coverage and clarifies that business loans are exempt from the RESPA.

SECTION 105. DISCLOSURES FOR ADJUSTABLE RATE MORTGAGES

Section 105 provides financial institutions with options for disclosing information regarding the impact of changes in interest payments under adjustable rate mortgages.

Section 105 also adds a new paragraph to section 128(b) of the TILA concerning the honoring of lock-in promises.

SECTION 106. CERTAIN CHARGES

This section clarifies whether certain fees should be included or excluded in the calculation of the finance charge under the TILA.

(a) *Third Party Fees.*—This section provides that fees imposed by the closing agent should be excluded from the finance charge when the creditor does not expressly require their imposition or the services provided and the creditor does not retain the charges. Settlement agents frequently incur costs that they pass on to consumers without the creditor's knowledge or retention of the specific charge; one common example is courier fees. Creditors exercise little, if any, control over settlement agents' charges.

(b) *Mortgage Broker Fees.*—This section, which applies to transactions entered into after the date of enactment, clarifies that borrower-paid mortgage broker fees will be included in the finance charge. This bright line rule eliminates a review of such factors as whether a borrower may or may not obtain more favorable loan terms or more timely loan funding using a broker rather than applying directly to the creditor for a loan. Lender-paid broker fees are not included in the finance charge because they are not paid by the borrower; only those charges which the borrower actually pays are included in the finance charge.

(c) *Debt Cancellation.*—Section 106(c) currently pertains to the treatment of certain installment sale contracts or leases under the TILA. Under subsection 106(c) of this legislation, charges or premiums for such contracts must be included in the finance charge unless the creditor makes a clear and specific written statement to the borrower that sets forth the cost of the contract and states that the borrower may choose the person from whom he or she obtains coverage. This treatment applies to contracts involving insurance or any voluntary insurance product in connection with any consumer credit transaction that provides protections against loss of or damage to property or against part or all of the debtor's liability for amounts in excess of the value of the collateral securing the debtor's obligation, or against liability arising out of the ownership or use of the property.

(d) *Taxes on Security Instruments or evidences of Indebtedness.*—Section 106(d) of the TILA currently allows creditors to exclude from the finance charge fees imposed by law for perfecting security interests related to the credit transaction, such as filing fees for recording the security instrument. Some states impose taxes on the indebtedness or on the documents evidencing the indebtedness or granting the security interest, commonly referred to as intangible taxes. This legislation provides that intangible taxes may be excluded from the finance charge when the tax must be paid before the creditor can perfect its security interest.

(e) *Preparation of Loan Documents.*—Section 106(e) of the TILA currently excludes from the finance charge specific items that are regularly incurred when credit is secured by an interest in real property, such as appraisal fees, title examinations and document preparation. The Official Staff Commentary to Regulation Z explains that a lump sum charged for conducting or attending a closing "is excluded from the finance charge if the charge is primarily for services related to" the items excluded by section 106(e). This

legislation clarifies that a closing fee that may also cover the incidental services performed at the closing is not a finance charge.

(f) *Fees Relating to Pest Infestations, Inspections, and Hazards.*—Currently, section 106(e) of the TILA excludes appraisal fees incurred in connection with a real estate mortgage transaction from the finance charge. Appraisal-related fees, for such items as termite reports, building inspections or flood hazard assessments, are also incurred in evaluating potential risks to the value of the real property securing the transaction both before and after extending credit. The same reasoning that excludes appraisal fees from the finance charge when the credit is secured by real estate should apply to these fees. This legislation clarifies that fees for appraisal-type services should be excludable from the finance charge, both when the service is originally provided prior to settlement and for subsequent maintenance or verification services after settlement.

(g) *Ensuring Finance Charges Reflect Cost of Credit.*—Section 106(f) of this legislation directs the Federal Reserve Board to reexamine the costs that consumers incur in connection with an extension of credit and to determine how to calculate the finance charge to reflect more accurately these costs. The definition of finance charge does not currently have a unified approach to fees. The current list of excludable and excluded fees prevents the consumer from knowing the total cost of the credit while the discretion give to creditors on the treatment of some charges results in non-uniform disclosures.

The existing exemption from rescission for same creditor refinancings reportedly has enabled creditors to "flip loans," potentially charging consumers higher rates on refinancings while eliminating their rights of rescission. The Federal Reserve Board is directed to study this practice to determine how creditors abuse the system the scope of such abusive practices, and whether "flipping" can be prevented.

The Federal Reserve Board is specifically directed to work with representatives of affected industries and consumer groups (including working with those outside of the Consumer Advisory Council) with respect to both issues in preparing its report to Congress. The Federal Reserve Board is to report to Congress on regulatory or legislative recommendations for resolving both issues. To the extent regulatory changes need to be made, the Federal Reserve Board is authorized and directed to promulgate final regulations within one year of the date of enactment of this legislation.

SECTION 107. EXEMPTIONS FROM RESCISSION

Section 125(a) of TILA provides consumers with the right to rescind credit transactions secured by their homes within three days after consummation, receipt of the required disclosures, *and* the notice of the right to rescind. This provision gives consumers a "cooling off" period in which to reconsider offering their homes to secure the credit transaction. It was enacted in response to the abusive practices of certain home-improvement contractors who showed up at consumers' doorsteps and pressured them into purchasing home improvements on credit, secured by the house.

The right of rescission has never applied to transactions to finance the acquisition or construction of homes. 15 U.S.C.

§ 1635(e)(1). Similarly, section 125(e)(2) currently exempts from rescission the refinancing or consolidating of existing home-secured debt with the same creditor when there are no new advances.

The amendment extends the exemption from rescission for same creditor "no-cash-out" refinancings to all refinancings of debt initially incurred to finance the acquisition or construction of consumers' homes that are secured by a first lien on the consumers' principal dwelling to the extent there are no new advances and no consolidation of debt. The provision does not exempt "high cost" mortgages, as defined in section 103(aa); these mortgages remain subject to full rescission rights.

The requirement that the refinancing relate back to an initial residential mortgage transaction prevents unscrupulous home improvement contractors from making loans to consumers with no existing liens on their homes for the purchase of "improvements" and then refinancing that debt to avoid rescission rights. In addition, the exemption only applies to a refinancing to the extent that no consolidation of debt and no new advances are involved. However, if a consumer refinances a residential mortgage transaction, (with a consolidation of debt or new advances) regardless of the remaining principal amount and subsequently refinances (with no consolidation or no new advances), the entire new refinancing is exempt from rescission. Thus, a refinancing with new advances within a series of refinancings will not affect a future refinancing's exemption from rescission, provided that the future refinancing does not involve a consolidation of existing debt and new advances.

SECTION 108. TOLERANCES; BASIS OF DISCLOSURES

(a) *Tolerances for Accuracy*.—The two key disclosures required by TILA are the finance charge and the annual percentage rate (the "APR"). In 1980, Congress amended section 107(c) of TILA to explicitly provide a tolerance of one-eighth of one percent in calculating the APR; no statutory tolerance was specified for calculating the finance charge. The Board subsequently adopted, as a footnote to Regulation Z, a tolerance for finance charge calculations for closed-end credit of $5 for an amount financed up to $1000 and $10 for an amount financed greater than $1000. 12 C.F.R. § 226.18 n. 41. Since every transaction subject to TILA has APR and finance charge disclosures, the lower of the two tolerances ultimately determines whether a violation has occurred. Section 108(f) provides a finance charge tolerance of one-half the APR tolerance set forth in section 107(c) but includes a floor of $25 and a ceiling of $200. The provision is not intended to permit bad-faith intentional understatements of finance charges.

The amendment provides that a disclosed finance charge that is greater than the actual finance charge shall be considered accurate for purposes of TILA. This language reinforces section 103(z) which allows for overstatements without imposing liability.

The amendment also implements a different tolerance for determining if the finance charge is accurate for purposes of rescission. By providing a finance charge tolerance of one-half of one percent of the loan amount, the penalty of rescission will be limited to those circumstances in which there has been a substantial disclosure error.

(b) *Basis of Disclosure for Per Diem Interest*.—Interim interest, the interest due for the period from loan closing until the date of the first payment, is regularly paid at the closing. However, it can be difficult to accurately calculate this charge at the time documents are prepared for the closing since interim interest, unlike other charges, changes if the date of closing is advanced or delayed. The existing regulation is unclear with respect to a creditor's right to estimate interim interest or treat it as a minor irregularity. If the loan is consummated or funded on a date other than the date anticipated when disclosures were prepared (for example, because the consumer is unable to attend closing on the targeted date), the finance charge disclosure may become out of the range of tolerance. This provision allows creditors to have documents produced for the closing and sent to the closing agent based on the expected closing date and the information available to the creditor at the time the documents are being prepared.

SECTION 109. LIMITATION ON LIABILITY

Responding to the more that 50 nation-wide class actions that have been filed in the last year based on the Rodash decision, this amendment eliminates liability based on the treatment of specific types of charges. The limitation on liability extends to claims based on disclosure of a finance charge, or other numerical disclosure, that is within the tolerances established by this legislation. In addition, the limitation includes a provision protecting creditors from liability when they overstate an amount or percentage to be disclosed.

The amendment also eliminates creditor liability for use of the incorrect form for providing the consumer with notice of his or her rescission rights. Existing section 125(a) of TILA requires the creditor to give the consumer notice of the right to rescind in accordance with regulations of the Board. The Board has adopted two model forms, Form H–8 and Form H–9, for notice of the consumer's right to rescind in closed end transactions. The forms are labelled, respectively, "Rescission Model Form (General)" and "Rescission Model Form (Refinancing". This amendment eliminates creditor liability where a creditor has provided the consumer with notice of the right of rescission using a model form but selected the incorrect model form or a written notice based on the incorrect model form.

The liability limitations set forth in this section do not apply to class actions for which final orders certifying the class were entered prior to January 1, 1995, and to individual actions and actions brought by the named consumers in any class action filed before June 1, 1995.

SECTION 110. LIMITATION ON RESCISSION LIABILITY

This section responds to a court opinion that held that a lender's reliance on either form of rescission notice published and adopted by the Federal Reserve Board was misplaced. Section 110 provides that where a creditor selects the appropriate Federal Reserve Board form of notice and properly completes the form, the borrower cannot rescind on the basis of improper notice. The Federal Reserve Board is directed to reexamine forms that have been adopted to eliminate further confusion facing creditors and consumers.

SECTION 111. CALCULATION OF DAMAGES

Section 130(a) of TILA allows a consumer to recover both actual and statutory damages in connection with TILA violations. Congress provided for statutory damages because actual damages in most cases would be nonexistent or extremely difficult to prove. To recover actual damages, consumers must show that they suffered a loss because they relied on an inaccurate or incomplete disclosure.

Recognizing the difficulty of proving actual damages and the increase in costs involved in mortgage lending, this amendment increases the statutory damages available in closed end credit transactions secured by real property or a dwelling to a minimum of $250 and a maximum of $2,500.

SECTION 112. ASSIGNEE LIABILITY

(a) *Violations Apparent on the Face of Transaction*.—Section 131(a) of TILA currently provides that assignees are liable only if the violation is apparent on ''the face of the disclosure statement.'' To lessen the burden on the secondary market while maintaining the deterrent the provision has on unscrupulous lenders, this amendment to section 131 provides that, for closed end loans secured by real property, the ''face of the disclosure statement'' refers only to the Truth In Lending disclosure document, any itemization of the amount financed and any other disclosure of disbursement, and not to ''other documents assigned'' generally. Following Federal Reserve Board review pursuant to section 106(g) and section 102 of this legislation, it is anticipated that the assignee will be able to determine compliance based on a review of a single format of disclosure.

(b) *Servicer not Treated as Assignee*.—A number of recent consumer lawsuits against mortgage loan servicers have claimed the servicer is an assignee of the creditor who made the loan and is therefore liable for errors under section 131. This provision clarifies that the loan servicer (the entity collecting payments from the consumer and otherwise administering the loan) is not an ''assignee'' under the TILA unless the servicer is the owner of the loan obligation. Moreover, a servicer shall not be deemed to be an owner of the loan on the basis of an assignment of the loan or the mortgage for administrative convenience in servicing the loan. A ''servicer'' is defined by reference to section 6(i)(2) of the RESPA. The TILA continues to apply to servicers who were the original creditors and then sold the loan but retained servicing rights. This amendment does not change the law; rather, it provides courts with further specific guidance on the interpretation of current law.

SECTION 113. RESCISSION RIGHTS IN FORECLOSURE

This amendment adds a new subsection to section 125 of TILA giving consumers the right to rescind a loan within the three-year time period established in section 125(f) of TILA as a defense if the creditor brings an action to foreclose on the consumer's principal dwelling in three specific instances: improper treatment of borrower-paid mortgage broker fees in calculating the finance charge, use of the incorrect form of notice of the right of rescission, and dis-

closure of a finance charge which understates the actual finance charge by more than $35. The consumer protection provisions of this section are intended to benefit consumers that are unable to meet their mortgage obligations and are not intended as a mechanism whereby consumers can avoid their obligations by defaulting and then raising the defense in foreclosure. Nothing in this section is intended to override the exceptions to the rights of rescission created in section 125(e).

Section 125(f) of TILA provides that the consumer's right of rescission expires on the earlier of three years after the date of consummation of the transaction or upon the sale of the property even if the consumer has not received the required disclosures or forms. Rescission rights expire in three years. The time period shall not be extended except as explicitly provided in section 125(f) relating to agency enforcement proceedings. However, section 125(f) does not affect any equitable remedies that may be available under State or common law.

SECTION 114. RECOVERY OF FEES

Section 114 makes a borrower who exercises a right of rescission liable under TILA for any appraisal reports or credit reports charges.

SECTION 115. HOMEOWNERSHIP DEBT COUNSELING NOTIFICATION

Section 115 repeals homeownership debt counseling notification under the Housing and Urban Development Act of 1968. Homeownership is widely available through the private sector. Therefore, a government program is both duplicative and wasteful.

SECTION 116. HOME MORTGAGE DISCLOSURE ACT

The HMDA requires a financial insitution with assets of $10 million or more that has a headquarters or a branch within a metropolitan statistical area to compile and report data related to home mortgage loans. Section 116(a) modifies the HMDA to exempt institutions with $50 million in assets or less from the reporting requirements. The Federal Reserve Board is also given the discretion to further exempt institutions with assets of $50 million or greater if the Board determines that the burden of compliance with the HMDA outweighs the usefulness of the information required to be reported. Finally, section 116(b) permits depository institutions to keep such data in their home office (instead of in each branch) and make it available upon written request.

SECTION 117. APPLICABILITY

The amendments made by section 106(a), (d), (e), and (f) and sections 108, 112 and 113 will apply to all consumer credit transactions in existence or consummated on or after the date of enactment. Subsections 106(a), (d), (e) and (f) (certain charges) and section 112 (assignee liability) apply retroactively. In contrast, section 106(b) regarding the treatment of borrower-paid mortgage broker fees applies prospectively. Sections 108 and 113 are applied retroactively. Section 109 (limitation on liability) applies to all existing transactions. The remaining sections, section 107 (exemption for

non-cashout refinancings), section 111 (statutory damages) and section 110 (limitation on rescission liability), apply prospectively. However, nothing in this section is intended to change the law retroactively with respect to individual actions or counterclaims filed before June 1, 1995, class actions for which a final order certifying the class was entered before January 1, 1995, actions by named individual plaintiffs in any class action filed before June 1, 1995, or any consumer credit transactions with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995 as provided in section 109(a) (new section 139(b) of the TILA).

SUBTITLE B—COMMUNITY REINVESTMENT ACT AMENDMENTS

SECTION 121. EXPRESSION OF CONGRESSIONAL INTENT

Section 121 amends the Congressional purpose for the CRA by stating that in encouraging financial institutions to meet the credit needs of their communities, regulators are not supposed to impose additional regulatory burden or paperwork on financial institutions.

SECTION 122. COMMUNITY REINVESTMENT ACT EXEMPTION

Section 122 exempts from the examination requirements of the CRA any financial institution if the institution and the holding company which controls the institution have not more than $100 million in assets (which is to be adjusted for inflation).

SECTION 123. SELF-CERTIFICATION OF COMMUNITY REINVESTMENT ACT COMPLIANCE

Section 123 allows a financial institution with no more than $250 million in assets to self-certify compliance with the CRA, provided the institution has not been found to have engaged in a pattern or practice of illegal discrimination under the FHA or the ECOA within the past 5 years and has a current CRA rating of "satisfactory" or "outstanding." This section also requires the financial institution to maintain a public notice of self-certification and provides for regulatory review of self-certification reasonableness during each examination for safety and soundness. In addition, this section provides for the institution to be examined for CRA compliance if the institution's self-certification is found to be "not reasonable." If after the regular CRA exam an institution receives a less than "satisfactory" CRA rating, it shall not be allowed to self-certify again for a period of five years.

SECTION 124. COMMUNITY INPUT AND CONCLUSIVE RATING

Section 124 amends the CRA to establish a new mechanism for community input for an institution's CRA examination by providing the public advance notice in the Federal Register of an institution's CRA examination. After the Federal financial supervisory agency provides such notice and reviews all timely comments, the financial institution is provided a conclusive CRA rating until its next CRA examination. A reconsideration of an institution's rating may be requested within 30 days of the disclosure of the rating to the public.

Under section 124(c), an institution's CRA record is taken into account in the overall evaluation of the condition of an institution rather than at the time of an application for a deposit facility. Current law requires the regulator to take into consideration an institution's CRA record when it applies for a deposit facility.

SECTION 125. SPECIAL PURPOSE FINANCIAL INSTITUTIONS

Section 125(a) requires the appropriate Federal financial supervisory agency, in evaluating the CRA records of special purpose institutions, to take into account the nature of the business of such institutions and the amount of deposits received by such institution. Subsection (b) defines the term "special purpose institution" to mean a financial institution that does not generally accept deposits in amounts less than $100,000 dollars. Such institutions include, but are not limited to, wholesale, credit card and trust institutions.

SECTION 126. INCREASED INCENTIVES FOR LENDING TO LOW- AND MODERATE–INCOME COMMUNITIES

Section 126 revises the CRA to expand the category of capital investments, loan participations, and other ventures for which an institution can receive CRA credit. Under current law, in evaluating the record of a non-minority-owned and non-women-owned financial institution, an agency may consider as a factor capital investment, loan participants, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions, provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.

In order to encourage institutions to participate in transactions that have the effect of providing credit to low- and moderate-income neighborhoods, regardless of whether those neighborhoods are in an institution's community, section 126 requires the agencies to give institutions credit for investments in or loans to any minority or women's depository institution or low-income credit union. The agencies are also directed to give credit for participation in any joint venture or other entity or project which provides benefits to any distressed community, whether or not the distressed community is where the institution is chartered to do business. Institutions must also receive credit for investments in or loans to targeted low- and moderate-income communities, including real property loans to such communities.

Finally, the agencies are required to consider equally with other factors capital investment, loan participation and other ventures undertaken by the institution in cooperation with minority and women owned financial institutions and low income credit unions to the extent that these activities help meet the credit needs of the community in which these institutions are located. Capital investment, loan participations, and other ventures undertaken by institution in cooperation with a community development financial institution (so long as the loans and other financial services provided to low- and moderate-income persons and small business are meeting the credit needs of the local communities served by the major-

ity-owned institution) are also to be considered equally with all other factors.

SECTION 127. PROHIBITION ON ADDITIONAL REPORTING UNDER COMMUNITY REINVESTMENT ACT

This section prohibits the Federal financial institution regulators from requiring additional reporting or recordkeeping from financial institutions as a result of any regulations prescribed under the CRA.

SECTION 128. TECHNICAL AMENDMENT

The Riegle-Neal Interstate Banking and Branch Efficiency Act of 1994 modified the CRA to include a requirement to have a separate discussion of the findings and conclusions of a CRA report for each metropolitan area in which a regulated depository institution maintains one or more domestic branch offices. Under current law, this requirement applies to all regulated depository institutions including institutions that are located in only one state. The legislative intent of the provision was to have the requirement apply only to regulated institutions with interstate branches. Section 128 makes a technical revision to the CRA that provides that the requirement apply only to regulated banks with interstate branches.

SECTION 129. DUPLICATIVE REPORTING

Section 129 exempts institutions which are members of the Federal Home Loan Bank System from meeting the Federal Home Loan Bank Act's community investment and service requirements if the institution has received a CRA rating of ''outstanding'' or ''satisfactory''.

SECTION 130. COMMUNITY REINVESTMENT ACT CONGRESSIONAL OVERSIGHT

Section 130 requires each Federal banking agency to report to Congress by December 31, 1996 and by December 31, 1997, respectively, on the implementation of the CRA regulations prescribed after the date of enactment H.R. 1858. These reports are to include input from the regulated financial institutions and quantifiable measures of the cost savings of the new CRA regulations and their effectiveness in achieving CRA objectives.

SECTION 131. CONSULTATION AMONG EXAMINERS

Depository institutions frequently are subject to multiple exams by the same agency. For example, an institution may have an annual safety and soundness exam as well as a CRA exam and a trust department exam, all of which may be conducted at separate times. These separate and uncoordinated exams may result in inconsistent recommendations to an institution. Sec. 131 is intended to reduce the burden placed on banks as a result of multiple exams by requiring each agency to direct is examiners to consult on examination activities related to an institution and resolve any inconsistencies in the examiners' recommendations. In addition, section 131 directs that each agency appoint an ''examiner-in-charge'' who is responsible for consultation with all examiners of an institution.

SECTION 132. LIMITATION ON REGULATIONS

Section 132 provides that no CRA regulation may be promulgated which would require financial institutions to make loans to any uncreditworthy person that would jeopardize the safety and soundness of the institution. In addition, no regulation prescribed under the CRA shall require a financial institution to make a loan on the basis of any discriminatory criteria prohibited under any U.S. law. It also clarifies that no regulation shall prevent or hinder in any way a financial institution's full responsibility to provide credit to all segments of its community. Finally, it clarifies that these regulations shall encourage financial institutions to extend credit to all creditworthy persons, consistent with safety and soundness.

SUBTITLE C—CONSUMER BANKING REFORMS

SECTION 141. TRUTH IN SAVINGS

Section 141 revises the TISA to eliminate provisions that have resulted in unnecessary and overly complex regulations. The revisions to the TISA retain the basic components of that Act relating to disclosure of account fees, charges, penalties and simple interest rates. Financial institutions would continue to disclose minimum balance requirements at the time a consumer opens an account or upon request and would also continue to be required to disclose a change in the terms of an account at least 30 days before such change becomes effective. Section 141 also retains the prohibition against deceptive and misleading advertising of accounts.

The changes that section 141 makes to the TISA primarily concern the requirement that financial institutions disclose the ''annual percentage yield'' for accounts and the application of civil liability for violations of the TISA. The TISA currently requires the Federal Reserve Board to develop a formula for calculation of an annual percentage yield. Development of such formula has proved to be extremely difficult. Furthermore, it appears that disclosure of an annual percentage yield may not provide consumers with significantly more information concerning an account than disclosure of the simple interest rate. As such, the requirement for financial institutions to disclose an annual percentage yield is repealed.

Section 141 also removes the civil liability provisions for violations of the TISA. The imposition of civil liability for violation of the TISA has resulted in financial institutions seeking numerous clarifications and commentaries from the Federal Reserve Board increasing the regulatory burden for both the industry and the Board. Accordingly, the civil liability provisions are repealed. The federal banking agencies would still retain the authority to take administrative actions to enforce the TISA.

SECTION 142. INFORMATION SHARING

Section 142 pertains to the sharing of information among depository institutions and their affiliates and subsidiaries where such sharing or communication may be restricted or limited by law. This section does not authorize the sharing of information with persons or entities other than affiliates or subsidiaries of a depository insti-

tution. In addition, this section is not intended to restrict or otherwise affect the sharing or communication of information that is otherwise permissible. Before information regarding a consumer may be shared or communicated in reliance on this provision, the depository institution, subsidiary or affiliate must disclose to the consumer that such information may be communicated or shared and the customer must be given the opportunity to direct that the information not be communicated or shared. This section is not intended to supersede in any way any sales practice rules issued by the National Association of Securities Dealers. The Committee is of the opinion that such sales practice rules concerning information sharing should apply equally to all affiliates of a broker dealer.

SECTION 143. ELECTRONIC FUND TRANSFER ACT CLARIFICATION

Section 143 clarifies that provisions of the EFTA do not apply to stored value cards or value stored on such cards except for transactions where the card is actually used to access an account to effect a transaction. In addition, computers, computer-driven programs, or software that are functionally equivalent to stored value cards are also exempted from EFTA.

SECTION 144. LIMIT ON RESTITUTION FOR TRUTH IN LENDING VIOLATIONS IF SAFETY AND SOUNDNESS OF VIOLATOR WOULD BE AFFECTED

Under current law, Section 108(e) of TILA prescribes rules for reimbursement of inadequately disclosed finance charges, and requires the federal financial institution supervisory agencies to order restitution to consumers of amounts charged but not adequately disclosed. Section 144 allows supervisory agencies to take into account the safety and soundness of that institution when requiring restitution from an institution. Under the section, two alternatives to full, immediate restitution exist. First, an agency is able to order partial restitution, in an amount that would not have a significantly adverse impact on the lender's safety and soundness. Second, an agency is allowed to order restitution in the full amount, but to be paid over a period of time to avoid a significantly adverse impact. In the case of the federal financial institution supervisory agencies, an agency cannot order partial restitution or restitution in partial payments over an extended period unless the agency made a factual determination that full, immediate restitution would cause the creditor to become undercapitalized pursuant to such agency's regulations promulgated under section 38 of the Federal Deposit Insurance Act.

SUBTITLE D—EQUAL CREDIT OPPORTUNITY ACT AMENDMENTS

SECTION 152. FINDINGS AND PURPOSE

Section 152 states that the purpose of this legislation is to reconcile and coordinate the notice requirements under the ECOA amd FCRA.

SECTION 153. EQUAL CREDIT OPPORTUNITY ACT AMENDMENTS

Section 153 coordinates notices required under the ECOA resulting from adverse credit actions with notices required under the FCRA where requirements of the two Acts overlap. It also ensures that when credit is denied based on a consumer report, the adverse action notice must state that the credit denial was based on information contained in the credit report. In addition, the notice must contain: (1) the name, address, and telephone number of the consumer reporting agency making the report; and, (2) a statement of the consumer's right to obtain a free copy of the consumer repot and to dispute the accuracy or completeness of any information in the consumer report. In addition, the ECOA is amended by limiting liability for violations of the adverse notice requirements provided for in section 701(d) if it can be shown that the creditor maintained reasonable procedures to assure compliance.

SECTION 154. FAIR CREDIT REPORTING ACT AMENDMENTS

Section 154 coordinates the notices required under the FCRA resulting from adverse credit actions with notices required under the ECOA where requirements of the two Acts overlap.

SECTION 155. INCENTIVES FOR SELF-TESTING

Section 155 is designed to encourage lenders to conduct self-tests in order to determine their compliance with fair lending laws. First, the section establishes a privilege for lenders who self-test for compliance with the ECOA or the FHA from having such tests used against them in any proceeding or civil action brought under these acts where the lender has identified discriminatory practices and has taken appropriate corrective actions. Such tests, however, can be used if the lender conducted them at the request of an agency, they have been disclosed to a third party by the lender, if they are used as an affirmative defense by the lender, or in determining the remedy for FHA or ECOA violations. Second, the section grants the Federal banking regulators discretionary authority to refer evidence of discrimination contained in a self-testing report to the Attorney General or the Secretary of HUD under certain circumstances.

Ambiguities under current law in the self-testing area create disincentives for financial institutions to test their activities with the nation's fair lending laws. Under current law, the possibility exists that self-tests will be used as evidence against a lender in a later administrative proceeding or civil action. The privilege and discretionary referral provided for under section 155 are designed to eliminate these current disincentives.

Under this section, the appropriate federal department or agency is given the authority to determine which kinds of tests will qualify for the privilege. Although paired testing is a widely accepted form of testing for noncompliance, other testing methods may produce similar and reliable evidence of unlawful practices and may be less cost-prohibitive for smaller institutions. Therefore, these tests also warrant protection under this section.

SECTION 156. CREDIT SCORING SYSTEMS

Section 156 amends the ECOA to clarify that credit decisions based solely on an empirically derived, demonstrably and statistically sound, credit scoring system, as defined by the Federal Reserve Board in regulations prescribed under this title, shall be in compliance with the non-discrimination requirements under ECOA (subsection (a)) so long as the system does not use any category protected under subsection (a), does not use any functional equivalent of such a category, and does not use any criterion that has a discriminatory effect on any category unless the use of the criterion is justified by business necessity and there is no less discriminatory alternative available. The term business necessity as well as the duty of showing a less discriminatory alternative shall be construed consistent with U.S. Supreme Court precedent such as *Griggs* v. *Duke Power Company*, 401 U.S. 424 (1971) and *Albermarle Paper Company* v. *Moody*, 422 U.S. 405 (1975).

SECTION 157. CONSULTATION BY ATTORNEY GENERAL REQUIRED IN NONREFERRAL CASES

Section 157 requires the Attorney General to consult with the appropriate regulatory agency prior to bringing a civil action. The Attorney General and the regulatory agencies are to work in close cooperation to avoid unnecessary duplication of effort, and to avoid unnecessary burdens on regulated entities.

SUBTITLE E—CONSUMER LEASING ACT AMENDMENTS

SECTION 163. REGULATIONS

Section 163 amends the Consumer Credit Protection Act by directing the Federal Reserve Board to address consumer leasing issues through regulation and requiring the Board to publish model disclosure forms to facilitate compliance with the disclosure requirements and to aid consumers in understanding leasing transactions.

SECTION 164. CONSUMER LEASE ADVERTISING

Section 164 rewrites the disclosure requirements for consumer lease advertising. Under this section, when an advertisement states that an initial payment or that no initial payment is required, the advertisement must also state that the transaction is a lease; the number of payments; the applicability of a security deposit; the number, amount and timing of payments; and certain other pertinent information. In addition, the special rules governing radio advertisements are repealed under this section.

SECTION 165. STATUTORY PENALTIES

Section 165 amends section 185(a) of the Consumer Credit Protection Act to limit a creditor's liability for statutory penalties for failure to provide certain consumer lease disclosures.

SUBTITLE F—FEDERAL HOME LOAN BANK AMENDMENTS

SECTION 171. APPLICATION FOR MEMBERSHIP IN THE FEDERAL HOME LOAN BANK SYSTEM

Section 171 establishes that an applicant for membership in the Federal Home Loan Bank (FHLB) System may submit the application in the district where the applicant's principal place of business is located rather than submit the application to the Federal Housing Finance Board in Washington. It also establishes that applicants may apply in an adjoining district if it is convenient and meets with the approval of the Federal Housing Finance Board.

SECTION 172. FEDERAL HOME LOAN BANK EXTERNAL AUDITORS

Section 172 provides that General Accounting Office audits of FHLBs shall not be limited to periods during which government capital has been invested in them. It also prohibits the Federal Housing Finance Board from participating in the hiring of an external auditor by the FHLBs, other than to establish requirements for audit contracts.

TITLE II—STREAMLINING GOVERNMENT REGULATIONS

SUBTITLE A—REGULATORY APPROVAL ISSUES

SECTION 201. STREAMLINED NONBANKING ACQUISITIONS BY WELL CAPITALIZED AND WELL MANAGED BANKING ORGANIZATIONS

Under current law, a bank holding company must submit a written notice to the Federal Reserve Board at least 60 days before engaging in a nonbanking activity. The Federal Reserve Board determines whether the activity is so closely related to banking or managing or controlling banks as to be a proper incident thereto.

Section 201 permits well capitalized and well managed bank holding companies to engage, either directly or through an acquisition, in nonbanking activities previously approved by the Federal Reserve Board without prior notice or with an abbreviated notice. In order to be eligible for these expedited procedures (1) the bank holding company must be well capitalized and well managed; (2) the company's lead insured depository institution must be well capitalized and well managed; (3) insured depository institutions controlling 80 percent of the company's banking assets must be well capitalized; (4) insured depository institutions controlling 90 percent of the company's banking assets must be well managed; (5) no insured depository institution controlled by the company may be undercapitalized or poorly managed (with a limited exception for recently acquired depository institutions); and, (6) neither the bank holding company nor any subsidiary depository institution may be the subject of any enforcement action, order, or administrative enforcement proceeding within the prior twelve months. In addition, the book value of the assets to be acquired may not exceed 10 percent of the holding company's consolidated total risk-weighted assets, and the price paid may not exceed 15 percent of the consolidated Tier 1 capital of the company. All activities must be conducted in compliance with any applicable regulations, orders, and interpretations of the Federal Reserve Board.

Qualifying bank holding companies may engage de novo in any "laundry list" nonbanking activity approved by the Federal Reserve Board by regulation without prior notice, but must inform the Board within 10 days after commencing the activity. Qualifying bank holding companies wishing to engage in an activity approved by the Federal Reserve Board by order, or wishing to acquire any nonbanking company, must provide 12 days prior notice to the Board. Prior to expiration of the notice period, the Federal Reserve Board may require the bank holding company to comply with statutory notice and review provisions that generally apply to proposals under section 4(c)(8).

SECTION 202. STREAMLINED BANK ACQUISITIONS BY WELL CAPITALIZED AND WELL MANAGED BANKING ORGANIZATIONS

Section 202 amends the notice procedures of the BHCA to permit well capitalized and well managed bank holding companies that are rated "satisfactory" or "outstanding" for CRA performance to acquire another bank, without prior approval, when the acquisition is limited in size, meets competitive criteria established by the Federal Reserve Board (in consultation with the Attorney General), and meets applicable geographical and other established statutory requirements. In addition, the bank holding company may not have been the subject of any enforcement action, order, or administrative enforcement proceeding within the twelve months prior to the acquisition.

Section 202 requires bank holding companies to provide the Federal Reserve Board with brief advance notification of the proposal to allow the Board to require a full notice or application if warranted by the specific case. It also clarifies that the Department of Justice's anti-competitive review remains applicable to notices filed under the streamlined procedures. Under these streamlined procedures the Attorney General will receive notification of the proposed acquisition at the same time as the Federal Reserve Board. The Attorney General shall advise the Federal Reserve Board during the review period in writing if any competitive concerns exist with respect to the transition. If the Attorney General advises the Federal Reserve Board that no such concerns exist, the post-approval waiting period in section 11(b) shall not apply.

SECTION 203. ELIMINATE FILING AND APPROVAL REQUIREMENTS FOR INSURED DEPOSITORY INSTITUTIONS ALREADY CONTROLLED BY THE SAME HOLDING COMPANY

Section 203 amends the Federal Deposit Insurance Act (FDIA) and the National Bank Consolidation and Merger Act to allow merger of banks controlled by the same bank holding company without having to comply with certain filing and approval requirements. Section 203 requires that these transactions meet the recently enacted interstate branching requirements. The responsible agency for the resulting bank may require an application under these Acts, if the facts of the specific case warrant.

SECTION 204. ELIMINATE REDUNDANT APPROVAL REQUIREMENT FOR OAKAR TRANSACTIONS

Section 204 amends the FDIA to remove the duplicative approval requirements for the merger of a bank and a savings association under thee Oakar Amendment to the FDIA. Section 204 leaves requirements under the Bank Merger Act intact. Section 204 does not remove the other provisions for Oakar transactions, including the requirement that the resulting institution remain adequately capitalized and the requirement that assessments paid by the resulting institution go to the appropriate FDIC insurance fund.

SECTION 205. ELIMINATION OF DUPLICATIVE REQUIREMENTS IMPOSED UPON BANK HOLDING COMPANIES AND OTHER REGULATORY RELIEF UNDER THE HOME OWNERS' LOAN ACT

Section 205 amends the Home Owners' Loan Act (HOLA) to eliminate duplicative regulation of bank holding companies under the BHCA and the HOLA. Currently, a registered bank holding company that controls a savings association is supervised by the Federal Reserve Board and is also subject to the requirements of the HOLA. As such, it must obtain approval from the OTS for acquisitions and must register with the OTS as a savings and loan association holding company. The amendment eliminates duplicative supervision under the HOLA. However, the amendment does not free savings associations owned by bank holding companies from the Qualified Thrift Lender (QTL) test or from any other requirements applicable to savings associations under Federal law.

Section 205 also amends the BHCA to ensure that the Federal Reserve Board and the OTS will cooperate in the supervision of bank holding companies that control savings associations. The Federal Reserve Board must seek and consider the views of the Director of the OTS in considering any application or notice by a bank holding company to acquire a savings association. The Federal Reserve Board also must consult with the Director, as appropriate, in establishing the scope of inspections of bank holding companies that control savings associations. Such consultation should be more involved when savings associations make up a substantial portion of the assets of the holding companies. The Federal Reserve Board must also, upon request of the Director, provide the Director with any inspection report or any other supervisory material relating to a bank holding company that controls a savings association. Finally, the Federal Reserve Board and the Director are required to cooperate in any enforcement action against a bank holding company that involves a savings association controlled by the company.

Section 205(d) reduces the regulatory and paperwork burden faced by savings and loan associations by allowing them to satisfy the QTL test required under the HOLA by meeting the Qualified Thrift Asset (QTA) test under the Internal Revenue Code.

Under HOLA the QTL test requires thrifts to have at least 65% of their portfolios in mortgages and mortgage-related products. In addition, the law also allows a limited amount of consumer loans, commercial loans and educational loans to be considered qualified lending. Thrifts must meet the QTL test in order to receive certain benefits not afforded to banks.

Under the tax code, the QTA test requires thrifts to have at least 60% of their assets in certain loans and investments listed in the code. The list includes residential mortgage loans, but not commercial loans or many types of mortgage backed securities. The two tests are similar, but not identical. In addition, the QTL test is computed on the basis of portfolio assets and the tax test on total assets. By meeting the QTA test, thrifts receive certain tax benefits, for example, the choice of using the experience method or the percentage of taxable income method of computing their bad debt reserve. This subsection does not affect tax law in any way. It merely reduces the paperwork burden on thrifts by no longer requiring them to juggle their assets to ensure that they have the correct balance of assets to meet their two similar but different tests.

SECTION 206. ELIMINATE REQUIREMENT THAT APPROVAL BE OBTAINED FOR DIVESTITURES

Section 206 eliminates a statutory presumption that a bank holding company that divests shares of any company to a third party investor in a transaction funded by any subsidiary of the bank holding company is presumed to continue to control those shares unless the Federal Reserve Board determines that the divestiture is genuine. The presumption was intended to prevent sham divestitures, but the application burden imposed on the banking industry has proved to outweigh the benefits of this requirement. The Federal Reserve Board can detect sham transactions through the examination process.

SECTION 207. ELIMINATE UNNECESSARY BRANCH APPLICATIONS

Section 207 eliminates the notice and approval requirements concerning the operation of branches for well-capitalized, CAMEL 1 or 2 institutions with ''outstanding'' or ''satisfactory'' CRA ratings. This section does not change in any way the geographic restrictions that govern the establishment or operation of a branch office.

SECTION 208. ELIMINATE BRANCH APPLICATION REQUIREMENTS FOR ATMS AND SIMILAR FACILITIES

Section 208 amends the McFadden Act and the FDIA to provide that automated teller machines (ATMs) or remote service unit (RSUs) owned by a depository institution are not considered to be branches for purposes of filing an application to establish a branch so long as they are owned and operated at sites at which the bank could operate a branch. Existing law regarding when other categories of ATMs and RSUs are to be considered branches is not affected by this amendment.

SECTION 209. ELIMINATE REQUIREMENT FOR APPROVAL OF INVESTMENTS IN BANK PREMISES FOR WELL CAPITALIZED AND WELL MANAGED BANKS

Section 209 amends the Federal Reserve Act to allow well capitalized institutions which have received one of the two highest composite CAMEL ratings to invest up to 150% of the institution's capital in its premises without obtaining prior approval.

SECTION 210. ELIMINATE UNNECESSARY FILING FOR OFFICER AND DIRECTOR APPOINTMENTS

Section 32 of the FDIA requires insured depository institutions and depository institution holding companies to file a notice with their regulators at least 30 days before hiring new directors or senior executive officers where the institution is undercapitalized or otherwise in troubled condition, has been chartered less than two years, or the institution or holding company has undergone a change in control during the past two years. In these situations, the individuals would have to undergo background checks.

Section 210 adds a provision that lets the agencies waive the notice requirement on a case-by-case basis in appropriate circumstances.

SECTION 211. STREAMLINING PROCESS FOR DETERMINING NEW NONBANKING ACTIVITIES

Section 211 amends the BHCA to eliminate the hearing requirement contained in Section 4(c)(8) of that Act. Section 211 also amends section 4(c)(8) to create an exception to that section's general prohibition on bank holding company insurance activities to allow bank holding companies to own insurance affiliates in accordance with State insurance laws. The provision states that it shall be "closely related to banking" to provide insurance as a principal, agent, or broker in any State, in full compliance with the laws and regulations of such state that apply uniformly to each type of insurance license or authorization in that State, including anti-affiliation laws.

SECTION 212. DISPOSITION OF FORECLOSED ASSETS

Under current law, bank holding companies are accorded up to five years to dispose of stock acquired as a result of a loan foreclosure; under certain circumstances, real estate assets may be held for up to ten years. National banks may hold both foreclosed real estate and foreclosed stock for a maximum period of 10 years. Section 212 would equalize the treatment of national banks and bank holding companies by amending section 4(c)(2) of the BHCA to provide authority for the Federal Reserve Board to approve applications to hold foreclosed stock for an additional five years. An extension beyond the initial five year period would be dependent on a showing by the bank holding company that it has made a good faith attempt to dispose of the asset within five years, or that disposal within the initial five year period would be detrimental to the company. The section also eliminates the statutory requirement that a bank holding company must apply for an extension every year.

SECTION 213. INCREASE IN CERTAIN CREDIT UNION LOAN CEILINGS

Section 213 allows a federal credit union to make aggregate loans up to $50,000 to officials of the credit union without approval by the board of directors. Under present law, the aggregate loan ceiling is $10,000.

SUBTITLE B—STREAMLINING OF GOVERNMENT REGULATIONS; MISCELLANEOUS PROVISIONS

SECTION 221. ELIMINATE THE PER-BRANCH CAPITAL REQUIREMENT FOR NATIONAL BANKS AND STATE MEMBER BANKS

Section 221 eliminates section 5155(h) of the Revised Statues. Currently, section 5155(h) requires national bank associations to maintain capital for their branches as if each branch were a separately chartered bank. In deleting this subsection, national banks' capital will be held against their total assets and not the assets of each of their individual branches.

SECTION 222. BRANCH CLOSURES

Section 222 clarifies the scope of the branch closing notice requirement under section 42 of the FDIA. Under section 42, an insured depository institution that intends to close a branch is required to notify the customers of the branch and the institution's appropriate Federal banking agency 90 days prior to the closing.

An interagency policy statement has interpreted section 42 such that (1) the term "branch" is defined as a traditional brick and mortar branch and does not include an ATM or remote service facility; and (2) the relocation or consolidation of a branch does not constitute a branch closing provided that the relocation or consolidation of a branch does not constitute a branch closing provided that the relocation or consolidation is within the same immediate neighborhood and the same customers are served.

Section 222 confirms, and in one way, broadens these interpretations in the intergency policy statement. ATMs are explicitly excluded from the definition of branch. Furthermore, the merger or relocation of branch is excluded from the notice requirement when certain conditions are met. The merger or relocation of a branch is excluded if the branch affected in located within 2.5 miles of or in the same neighborhood as another branch of the same institution. In other instances, the other branch must serve substantially all of the customers currently served by the branch to be closed.

Section 222 also excludes from the notice requirements branch closings in connection with an emergency acquisition or other FDIC assistance under the FDIC. Section 222 grants the agencies authority to create further exceptions consistent with the purposes of the section.

SECTION 223. AMENDMENTS TO THE DEPOSITORY INSTITUTIONS MANAGEMENT INTERLOCKS ACT

This section makes several changes to the Depository Institutions Management Interlocks Act. First, it increases the dollar thresholds in the rule currently prohibiting banks or bank holding companies with more than $1 billion in assets from having a management interlock with another nonaffiliated bank or bank holding company, where ever located, with assets greater than $500 million. This threshold would rise to $2.5 billion and $1.5 billion, respectively, and be adjusted annually for inflation.

Second, this section permits grandfathered interlocks to continue indefinitely (until the death or resignation of the official in ques-

tion). Third, it restores the exemptive authority the regulators had prior to 1994. Fourth, it permits a management official of one institution or hold company to serve as a management official of another non-affiliated institution or holding company if the institutions or holding companies (and their affiliates) hold in the aggregate no more than 20 percent of the deposits in each relevant geographic area in which they are located.

SECTION 224. ACCELERATION OF APPRAISAL SUBCOMMITTEE REPAYMENT

This section requires the acceleration of repayment to the Treasury of a five million dollar loan held by the Financial Institutions Examination Council's Appraisal Subcommittee. Under this section, the loan is to be repaid by the end of Fiscal Year 1998.

SECTION 225. ELIMINATE UNNECESSARY AND DUPLICATIVE RECORDKEEPING AND REPORTING REQUIREMENTS RELATING TO LOANS TO EXECUTIVE OFFICERS AND PERMIT PARTICIPATION IN EMPLOYEE BENEFIT PLANS

Section 22(h) of the Federal Reserve Act governs extensions of credit to insiders (executive officers, directors, and principal shareholders) of member banks and their affiliates, including related interests of those insiders (such as companies they control). In general, section 22(h) requires that insider loans be within certain limits and not be on preferential terms. Section 22(g) of the Federal Reserve Act establishes special limits for extensions of credit to executive officers only.

Without changing any of the core restrictions on insider lending, section 225 eliminates extraneous and unnecessary reporting requirements and ends coverage of certain persons who are executive officers and directors of affiliates who cannot affect policymaking at a bank. Section 225 does not affect the effectiveness of the insider lending provisions of section 22 of the Federal Reserve Act of the Federal Reserve Board's Regulation O in any significant way.

Section 225(a)(1) allows executive officers, directors, or principal shareholders to receive extensions of credit that are made pursuant to a benefit or compensation plan that is widely available to, and used by, employees of the bank. Such loans will continue to count toward the limits of section 22(h) but will no longer be barred as preferential. This amendment will permit such persons to participate in programs that allow reduced closing costs or a slightly favorable rate in connection with an employment-related relocation.

Section 225(a)(2) allows the Federal Reserve Board to exempt from the restrictions of section 22(h) executive officers and directors of affiliates who are not involved in policymaking at the bank, provided that the affiliate by which they are employed does not represent more than 10 percent of the consolidated assets of the organization. Maintaining updated records of the identities of all these persons, and their related interests represent a substantial recordkeeping burden. For large banks, this means tracking literally thousands of directors and executive officers, sometimes overseas, as well as any company those persons control. Given that these people are not employed by the bank or a significant affiliate

and cannot therefore affect the bank's policies, the costs of the recordkeeping requirement clearly outweigh the benefits.

Section 225(b) eliminates unnecessary reporting and recordkeeping requirements. The crucial recordkeeping requirements necessary to monitor compliance with Regulation O are contained in the Federal Reserve Board's regulation. Each bank is required to track loans to its insiders and their related interests, and examiners make certain that loans are within statutory limits and that adequate records are being kept. Various other statutory provisions, however, impose unnecessary recordkeeping and reporting burdens on banks that are not worth the costs they impose. Section 225(b) eliminates these burdens.

Section 225(c) amends section 22(g) to allow member banks to extend two types of credit to their executive officers: home equity lines not to exceed $100,000 and loans secured by readily marketable assets up to an amount to be set by the Federal Reserve Board. These loans are secured by collateral such that they pose minimal risk to the bank.

SECTION 226. EXPANDED REGULATORY DISCRETION FOR SMALL BANK EXAMINATIONS

Current law requires annual examinations for banks with $250 million or more in assets and permits examinations every 18 months for CAMEL 1 banks with less than $250 million in assets and for CAMEL 2 banks with less than $100 million in assets. The regulators may increase the CAMEL 2 threshold to $175 million after September 1996. Section 226 amends current law to permit the regulators to raise the CAMEL 2 asset threshold to $250 million after September 1996. In addition, the Federal banking agencies are required to report on a semiannual basis on the progress being made on implementing a system for coordinating examinations. The report must be filed until a system is implemented.

SECTION 227. COST REIMBURSEMENT

This section adds corporate customers to the cost reimbursement provisions of Section 3415 of Title 12 of the U.S. Code.

SECTION 228. IDENTIFICATION OF FOREIGN NONBANK FINANCIAL INSTITUTION CUSTOMERS

Section 228 repeals the responsibility of a domestic depository institution's obligation to maintain a listing of all domestic financial institutions having an account there. All foreign nonbank financial institutions with accounts at a domestic financial institution, however, would still be required to be identified and listed.

SECTION 229. PAPERWORK REDUCTION REVIEW

Section 229 requires each Federal financial institution regulator and the National Credit Union Administration to review and repeal unnecessary internal written policies.

SECTION 230. DAILY CONFIRMATIONS FOR HOLD-IN-CUSTODY REPURCHASE TRANSACTIONS

Section 230 requires the Secretary of the Treasury to revise regulations relating to confirmations for hold-in-custody repurchase transactions to permit the waiver of the right to obtain daily written confirmations if disclosure has been received that adequately informed the counter party of the benefits of receiving daily written confirmations, including, but not limited to, the value of receiving confirmations in verifying transactions and in perfecting a security interest under the Uniform Commercial Code.

SECTION 231. REQUIRED REGULATORY REVIEW OF REGULATIONS

Section 231 requires a review of all banking regulations at least once every ten years in order to identify outdated or otherwise unnecessary regulatory requirements imposed upon insured depository institutions. Each regulation will be reviewed by the Financial Institution Examination Council (the Council) or one of the Federal banking agencies, depending on which agency or Council promulgated the regulation.

As part of the review process, the Council or such appropriate Federal banking agency shall designate each regulation by category. On a regular schedule within the 10-year period, the Council or such appropriate Federal banking agency shall notify and solicit comments on each category from the pubic for their recommendations.

Further, the Council or such appropriate Federal banking agency shall publish in the Federal Register a summary of the comments including highlighted issues and comments. When it is appropriate, the Council or such appropriate Federal banking agency shall eliminate those regulations that were found to be unnecessary. The Council shall report to the Congress within 30 days of the publication a summary including significant issues raised during the review period, the relative merits of those issues, and whether the problems need to be addressed by the appropriate Federal banking agency or by legislation.

SECTION 232. COUNTRY RISK REQUIREMENTS

Under Section 905 of the International Lending Supervision Act (ILSA), federal banking regulators are required to mandate that banks maintain special reserves when their overseas loans have become impaired due to a foreign borrower's inability to make payment. Such reserves cannot be counted as capital or surplus or allowances for possible loan losses and are charged against current income. Section 233 provides that the regulators may, but are not required to, impose such special reserves.

SECTION 233. AUDIT COSTS

This section repeals the requirement that independent auditors attest to bank compliance with safety and soundness regulations and internal controls. It also inserts a "privileged and confidential" element to the annual management report required under Federal Deposit Insurance Corporation Improvement Act (FDICIA) that would permit regulators to designate certain information included

in such reports as privileged and confidential and therefore not available to the public. The designation of information as privileged and confidential is not intended to alter or provide an exemption from any requirement to file audited financial statements and audit letters otherwise required under the federal securities laws or rules or regulations adopted thereunder. In addition, the section also creates a safe harbor for well-capitalized and well-managed banks from the requirements of section 36 of the FDIA except the requirement for an independent financial audit.

SECTION 234. STANDARDS FOR DIRECTOR AND OFFICER LIABILITY

Section 234 provides that outside directors are subject to the same culpability standards as independent contractors in enforcement actions by the regulatory agencies. Under the new standard, regulators are required to show that an outside director knowingly or recklessly committed the Act in question. Under the present law, outside directors are subject to the same standards as officers and inside directors of a financial institution.

SECTION 235. FOREIGN BANK APPLICATIONS

This section amends section 7(d) of the International Banking Act (IBA) to permit the Federal Reserve Board to approve an application by a foreign bank to establish a branch or agency in the United States if the home country supervisor is working to establish arrangements for the consolidated supervision of such foreign bank. This changes current law, which mandates denial of an application unless the foreign bank is already subject to consolidated supervision. The mandatory standard of consolidated supervision has prevented otherwise qualified banks from entering the U.S. market, even if the home country supervisors are working to put in place a framework for consolidated supervision of the bank.

This section also requires the Federal Reserve Board to act on an application within 180 days of its receipt, except that the Board may, after giving notice to the applicant and the licensing authority, extend the time for no more than an additional 180 day period. Such time frames are appropriate in light of the time that can elapse in transmitting and translating information to and from foreign countries. The amendment also permits the Board to deny an application if the applicant does not respond in a timely manner to requests for information necessary to process the application. Thus, the amendment establishes a definite time frame for final action while retaining an incentive for an applicant bank to provide information in a timely manner.

The section also amends section 7(e)(1) of the IBA. Currently, section 7(e)(1) allows the Board to terminate a State-licensed office of a foreign bank if the foreign bank has committed a violation of law or engaged in unsafe practices in the United States or if the foreign bank is not subject to consolidated supervision by its home country authorities. Section 235(b) provides that, with respect to the consolidated supervision standard, the Board can terminate a foreign bank's operations for lack of consolidated supervision if the home country authorities are not making progress in establishing arrangements for the bank's consolidated supervision. Section 235(c) provides the Board parallel authority to terminate federally

licensed offices of foreign banks in addition to its current authority to terminate State-licensed offices.

SECTION 236. DUPLICATE EXAMINATION OF FOREIGN BANKS

This section amends section 7(c) of the IBA relating to the Federal Reservice Board's examination authority over foreign banks. The amendment provides that (1) the Board must take all reasonable measures to coordinate examinations with the licensing authority of the foreign bank's branch or agency; and (2) a foreign bank's offices should be examined with the same frequency as a State or national bank (currently annually) and that this examination requirement may be met by an exam by State supervisor.

This section also provides that the Board shall assess foreign banks for the costs of examinations, but only to the extent that State member banks are charged by the Board for their examination costs. This provision ensures parallel treatment of U.S. and foreign banks.

SECTION 237. SECOND MORTGAGES

This section amends the Home Ownership and Equity Protection Act of 1994 to apply only to subordinate mortgages. It also mandates the dismissal of any administrative enforcement proceedings or other actions which are pending on the date of enacting of the Financial Institutions Regulatory Relief Act of 1995 and are based on regulations in effect under the TILA with respect to high-cost residential mortgage transactions.

SECTION 238. STREAMLINING FEDERAL DEPOSIT INSURANCE CORPORATION APPROVAL OF NEW STATE BANK POWERS

This section gives insured state banks and their subsidiaries the ability to engage in new activities by giving the FDIC 60 days notice as long as the institution remains in compliance with appropriate capital standards. The FDIC may extend this notice period up to 30 days for the purpose of issuing notices of disapproval. The FDIC may disapprove any new activity unless it determines that the activity would pose a significant risk to the appropriate insurance fund.

SECTION 239. REPEAL OF CALL REPORT ATTESTATION REQUIREMENT

This section repeals the three-director attestation requirement. This is in addition to the provision requiring an officer to make a declaration as to the correctness of the call report.

SECTION 240. AUTHORITY OF THE COMPTROLLER OF THE CURRENCY

Section 240 places a permanent moratorium on the authority of the OCC to expand bank insurance powers, without rolling back the status quo. The section also provides for the functional regulation of national bank insurance activities. In prescribing the terms of state supervision of insurance, the section provides that no provision of section 5136, or any other section of this Title of the revised statutes (including section 5136B as added by this legislation) or section 13 of the Federal Reserve Act may be construed as limiting or otherwise impairing the authority of any state to regulate.

During consideration of H.R. 1858 by the Committee, several modifications were made to section 240 to clarify its provisions. These modifications included:

A ban on any State prohibitions relating to the extent of insurance activities currently authorized for national banks.

State supervision of annuities limited to disclosure and licensing. No ability to limit lobby sales.

Grandfather from State regulation related to the extent of insurance activities for all banks in towns of 5000 currently engaged in insurance activities in all States, subject to the outcome of pending litigation.

Non-discrimination provisions to require that any State supervisory limitation is applied equally to state banks and S&Ls.

Non-discrimination language to protect against a State insurance regulator labeling traditional banking products as insurance.

Limitation on the definition of insurance requiring that the definition must be tied to a State regulator's authority under the relevant State insurance law.

Express protection of any rights to engage in insurance activities by bank holding companies under the BHCA.

In addition, the Committee adopted an amendment designed to make it clear that State insurance regulators could not overstep their authority to establish the regulatory framework within which national banks can act as agent or broker in the sale of insurance. That amendment also sought to assure that State insurance regulators would not be able to define traditional banking products as insurance. It did that by retaining for the Comptroller of the Currency the ability to define the "business of banking" and authorizing national banks or their subsidiaries to engage in such activities. The Committee wishes to make clear, however, that this language does not permit the Comptroller to engage in definitional "games" which was the genesis of Section 240 in the first place.

The effect of this provision is to clarify that a State may not determine that certain traditional banking products—those that are part of the business of banking—are actually insurance products. The authority to determine what is insurance and what is traditionally banking, subject to this clarification, must be exercised in a manner consistent with the overall objective of new section 5136A of the revised statutes, which is to protect a State's authority to regulate insurance. It is clearly not within the scope of a State's authority under this Section, or otherwise, to determine that other types of traditional banking products, like standby letters of credit, swaps and other risk management tools, put option bonds, asset-backed securities, loan participations, stock indexed CDs, or other similar products, are insurance products for purposes of the National Bank Act.

Insurance is a State regulated business and nothing in this legislation is intended to interfere with the functional regulation of insurance products. In keeping with that design, the Committee would not expect for the Comptroller to define any product as the "business of banking" which today is regulated as insurance by the States. While it may be true that some future products may have

some insurance features and some banking features, the Committee does not expect the Comptroller to seek to broaden banking powers without Congressional authorization and the Comptroller should not declare any current insurance products, regulated as such by the States, to be the "business of banking".

In addition, the Committee is aware that commodity futures and option contracts are used by national banks to hedge against or manage the risk of adverse price changes in various physical commodities and financial products and that some of these contracts are, in fact, traded by national banks to hedge against price movements in homeowners, catastrophe and other forms of insurance. In adopting a broad definition of "insurance" for purposes of national bank activities under the legislation, the Committee does not intend to suggest that state regulations may permissibly define insurance so as to purport to regulate the offer, sale or trading in commodity futures and option contracts by national banks which are exclusively regulated by the CFTC under the Commodity Exchange Act.

SECTION 241. NATIONAL BANK COMMUNITY DEVELOPMENT INSURANCE ACTIVITIES

Section 241 authorizes the Comptroller of the Currency to approve an application by a national bank located in an empowerment zone to act as an insurance agent or broker. However, the bank must provide sufficient evidence that competitively priced insurance products are not adequately available and that the insurance products are sold only in the empowerment zone.

This new section will provide greater access to insurance in disadvantaged communities where competitively priced insurance is inadequate. Moreover, this amendment will foster economic revitalization, such as new business and employment opportunities, in low income neighborhoods by permitting the sale of insurance in empowerment zones. Additionally, by requiring the sale of insurance to occur from a "full-service branch" in the empowerment zone, the amendment provides a significant incentive for banks to improve the quality and quantity of banking services in such communities.

Effective immediately, this amendment allows national banks having main offices or full-service branches in areas eligible for designation as empowerment zones or enterprise communities under section 1392 of the Internal Revenue Code of 1986, or in Indian reservations, to sell insurance from that location. The designation criteria for an empowerment zone or enterprise community assures that the community is one experiencing economic distress.

SECTION 242. AUTHORIZING BANK SERVICE COMPANIES TO ORGANIZE AS LIMITED LIABILITY PARTNERSHIPS

Section 242 of this legislation modifies the Bank Service Corporation Act by expanding the scope of companies that may be owned by banks under the Act to include limited liability companies. These companies often combine the elements of both corporations and partnerships to provide more flexibility in management and in the sharing of profits among its owners than do corporations. Fur-

thermore, these companies are taxed as partnerships under the Internal Revenue Code.

Under current law, the Bank Service Corporation Act only allows multiple banks to invest in stock-owned corporations. These corporations are permitted to perform activities that the banks could engage in directly. It enables banks to join together to share overhead expenses and to realize the kinds of efficiencies of scale that are available to larger banks. By permitting institutions to own limited liability companies, banks will be granted even greater regulatory relief because of the increased flexibility, profit incentive, and tax treatment noted above. Restrictions on activities that are imposed on corporations under current law and the authority of the federal banking agencies to examine and regulate these companies would be maintained. Finally, banks would continue to be required to obtain prior approval from their primary banking regulator in order to invest in these companies.

SECTION 243. BANK INVESTMENT IN EDGE ACT AND AGREEMENT CORPORATIONS

Section 25A of the Federal Reserve Act imposes a non-waivable limit on a member bank's ability to invest in subsidiaries organized under that section (i.e., Edge Act subsidiaries) and in subsidiaries held directly under Section 25 of the Federal Reserve Act (i.e., certain financial service corporations held by a member bank's non-U.S. branches). The current non-waivable limit of 10% of a member bank's capital and surplus was enacted as part of the original Edge Act in 1919, before U.S. banks or the Federal Reserve Board had significant international banking experience. The revision would extend the non-waivable limit to 25% of capital and surplus providing that the Federal Reserve Board does not find the additional amount would be unsafe and unsound. In making this determination, the Federal Reserve Board would consider, inter alia, the capital and management strength of the member bank. The amendment would not otherwise change current law.

SECTION 244. REPORT ON THE RECONCILIATION OF DIFFERENCES BETWEEN REGULATORY ACCOUNTING PRINCIPLES AND GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

When the FDICIA was enacted in 1991, the Congress noted that differences between Regulatory Accounting Principles (RAP) and Generally Accepted Accounting Principles (GAAP) created significant, unnecessary and costly regulatory reporting and control burdens. Accordingly, Section 121 of FDICIA called for uniform accounting principles consistent with GAAP (unless the appropriate regulator found that a RAP standard was necessary to protect safety and soundness, etc.). However, the regulators seem to have taken no significant actions toward this goal. Therefore, this section requires each appropriate regulator to report to both the House Committee on Banking and Financial Services and the Senate Committee on Banking, Housing and Urban Affairs, within 180 days of enactment, concerning the actions taken and to be taken to achieve the goal set by FDICIA. This report will set the stage for a meaningful Congressional review as an important step toward

making sure that there is steady but prudent amelioration of this regulatory burden.

SECTION 245. WAIVERS AUTHORIZED FOR RESIDENCY REQUIREMENT FOR NATIONAL BANK DIRECTORS

Section 5136 of the Revised Statutes of the United States (12 U.S.C. 72) imposes a residency requirement on directors of national banks. In general, current law requires all directors, during their whole term of service, to be citizens of the U.S. and requires that at least two-thirds of the directors must be residents of the State in which the bank is located, subject to certain exceptions. Section 245 provides that the Comptroller of the Currency may waive the residency requirement.

TITLE III—LENDER LIABILITY

SECTION 301. LENDER LIABILITY

Section 301 clarifies the liability under Federal environmental law for lenders, fiduciaries, and Federal banking and lending agencies by adding section 45 to the Federal Deposit Insurance Act. Although the Environmental Protection Agency promulgated rules which clarified exemptions for lenders and those who act in these capacities, the rule was overturned by a court case. Section 301, again, provides certainty as to when and to what extent these parties may be liable for violations under Federal environmental law for their lending, financial and fiduciary activities.

New section 45(a) provides that a lender is liable when a lender actually participates in management of another person's environmental activities, regardless of the lender's status as a lending institution. A lender is considered under this section to be "actually participating in management" if a lender makes decisions regarding the disposition of hazardous substances or exercises control at a management level. "Actually participating in management" does not include traditional lending activities, such as the extension of credit, holding a security interest, providing financial advice, or undertaking voluntary inspection of property, unless these activities rise to the level of participating in the operation and management of the property.

A lender who is held liable pursuant to new section 45(a) shall be liable for the cost of any response or corrective action to the extent and for the amount that the lender actively and directly contributed to the hazardous substance release. However, a lender shall not be liable for the cost of any response or corrective action for a release of a hazardous substance which commences prior to and continues after the lender obtains a security interest in the property, so long as the lender does not actually participate in the management after obtaining a security interest in the property.

Further, new section 45(b) provides that a fiduciary, while acting in a fiduciary capacity, is personally liable for non-compliance with Federal environmental law as if the fiduciary holds the property free of trust. The fiduciary's liability is limited to assets of the trust or estate which are sufficient to indemnify the fiduciary. If a fiduciary is liable for environmental harm, section 45(b) makes clear that such liability does not otherwise override indemnification

terms of the fiduciary contract of employee benefit plans made pursuant to section 3(3) of the Employee Retirement Income Security Act of 1974. However, the fiduciary's liability is not limited if (1) the fiduciary had preexisting liability, (2) the fiduciary fails to exercise due care or contributed to the release of a hazardous substance, or (3) the fiduciary established the trust for the purpose of avoiding or limiting liability under Federal environmental law.

Lastly, new section 45(e) provides three limitations on environmental liability of Federal banking and lending agencies and their subsequent purchasers. First, new section 45(e)(1)(A) exempts Federal banking and lending agencies, their subsidiaries and subsequent purchasers from strict liability for the release of a hazardous substance on properties which were acquired in connection with (1) receivership, conservatorship, or through liquidation, (2) the provision of loans, discounts, advances, or other financial assistance, or (3) civil or criminal proceeding or administrative enforcement action, either by order or settlement under state law. However, if the party directly caused or materially contributed to the release of a hazardous substance, the party will be held liable for any remedial measures to cure the damages. Second, section 45(e)(1)(B) limits the liability of these entities under State law to the value of the entity's interest in the property. Third, new section 45(e)(2) makes clear that government agencies and their subsequent purchasers are not subject to the environmental lien provisions at the time of transfer.

While new section 45(e) provides the liability limitations for Federal banking and lending agencies and their subsequent purchasers, it specifically states in new section 45(e)(1)(B) that it does not preempt State law. It also does not immunize subsequent purchasers from liability if the purchaser (1) had preexisting liability to the property or is related to a party with such liability, (2) fails to agree to take reasonable steps necessary to abate the release or to protect public health and safety consistent with Federal environmental laws, or (3) directly causes or significantly and materially contributes to any additional release or threatened release on the property pursuant to new section 45(e)(1)(D)(iv). Furthermore, if the subsequent purchaser failed to take reasonable steps necessary to abate the release or to protect public health and safety under applicable Federal environmental laws, then the subsequent purchaser remains liable to the appropriate government agency for the costs of such remedial action, not exceeding the fair market value of the property, according to new section 45(e)(1)(E).

Section 301(b) provides an effective date to occur upon the section's enactment and applies to any claim that has not reached final adjudication or settlement prior to enactment.

TITLE IV—ANNUAL STUDY AND REPORT ON IMPACT ON LENDING TO SMALL BUSINESS

SECTION 401. ANNUAL STUDY AND REPORT ON SMALL BUSINESS LENDING

This section requires an annual study and report by the federal banking regulators on the impact this legislation has on lending to small businesses.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

* * * * * * *

FINDINGS AND PURPOSE

SEC. 2. (a) * * *

(b) It is the purpose of this Act to effect certain changes in the settlement process for residential real estate that will result—

(1) in more effective advance disclosure to home buyers and sellers of settlement costs;

(2) in the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services *without*—

(A) directly regulating settlement services prices; or

(B) directly regulating wages to bona fide employees that are not designed as a subterfuge to facilitate kickbacks among affiliated companies;

* * * * * * *

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term "federally related mortgage loan" includes any loan (other than temporary financing such as a construction loan) which—

(A) is secured by a first [or subordinate] lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

* * * * * * *

(7) the term "[controlled business arrangement] *affiliated business arrangement*" means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmately influences the selection of that provider; [and]

(8) the term "associate" means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is con-

trolled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business[.]*; and*

(9) the term "Board" means the Board of Governors of the Federal Reserve System.

UNIFORM SETTLEMENT STATEMENT

SEC. 4. (a) The [Secretary] *Board*, in consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the [Federal Home Loan Bank Board] *Director of the Office of Thrift Supervision*, shall develop and prescribe a standard form for the statement of settlement costs which shall be used (with such variations as may be necessary to reflect differences in legal and administrative requirements or practices in different areas of the country) as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans. Such form shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement and shall indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. The [Secretary] *Board* may, by regulation, permit the deletion from the form prescribed under this section of items which are not, under local laws or customs, applicable in any locality, except that such regulation shall require that the numerical code prescribed by the [Secretary] *Board* be retained in forms to be used in all localities. Nothing in this section may be construed to require that that part of the standard form which relates to the borrower's transaction to be furnished to the seller, or to require that that part of the standard form which relates to the seller be furnished to the borrower.

(b) The form prescribed under this section shall be completed and made available for inspection by the borrower at or before settlement by the person conducting the settlement, except that (1) the [Secretary] *Board* may exempt from the requirements of this section settlements occurring in localities where the final settlement statement is not customarily provided at or before the date of settlement, or settlements where such requirements are impractical and (2) the borrower may, in accordance with regulations of the [Secretary] *Board*, waive his right to have the form made available at such time. Upon the request of the borrower to inspect the form prescribed under this section during the business day immediately preceding the day of settlement, the person who will conduct the settlement shall permit the borrower to inspect those items which are known to such person during such preceding day.

SPECIAL INFORMATION BOOKLETS

SEC. 5. (a) The [Secretary] *Board* shall prepare and distribute booklets to help persons borrowing money to finance the purchase

of residential real estate better to understand the nature and costs of real estate settlement services. The [Secretary] *Board* shall distribute such booklets to all lenders which make federally related mortgage loans.

(b) Each booklet shall be in such form and detail as the [Secretary] *Board* shall prescribe and, in addition to such other information as the [Secretary] *Board* may provide, shall include in clear and concise language—

(1) a description and explanation of the nature and purpose of each cost incident to a real estate settlement;

(2) an explanation and sample of the standard real estate settlement form developed and prescribed under section 4;

(3) a description and explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate;

(4) an explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incident to a real estate settlement; and

(5) an explanation of the unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

(c) Each lender shall include with the booklet a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement as prescribed by the [Secretary] *Board*. Such booklets shall take into consideration differences in real estate settlement procedures which may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.

(d) Each lender referred to in subsection (a) shall provide the booklet described in such subsection to each person from whom it receives or for whom it prepares a written application to borrow money to finance the purchase of residential real estate. Such booklet shall be provided by delivering it or placing it in the mail not later than 3 business days after the lender receives the application, but no booklet need be provided if the lender denies the application for credit before the end of the 3-day period.

(e) Booklets may be printed and distributed by lenders if their form and content are approved by the [Secretary] *Board* as meeting the requirements of subsection (b) of this section.

SERVICING OF MORTGAGE LOANS AND ADMINISTRATION OF ESCROW ACCOUNTS

SEC. 6. [(a) DISCLOSURE TO APPLICANT RELATING TO ASSIGNMENT, SALE, OR TRANSFER OF LOAN SERVICING.—

[(1) IN GENERAL.—Each person who makes a federally related mortgage loan shall disclose to each person who applies for any such loan, at the time of application for the loan—

[(A) whether the servicing of any such loan may be assigned, sold, or transferred to any other person at any time while such loan is outstanding;

[(B) at the choice of the person making a federally related mortgage loan—

[(i) for each of the most recent 3 calendar years completed (at the time of such application), the percentage (rounded to the nearest quartile) of loans made by such person for which the servicing has been assigned, sold, or transferred as of the end of the most recent calendar year completed, except that—

[(I) for any loan application during the 12-month period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the information disclosed under this subparagraph may be for only the most recent calendar year completed, and for any loan application during the 12-month period beginning 1 year after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the information disclosed under this subparagraph may be for the most recent 2 calendar years completed; and

[(II) this subparagraph may not be construed to require the inclusion, in the percentage disclosed, of any loans the servicing of which has been assigned, sold, or transferred by the person making the loan to a transferee servicer that is an affiliate or subsidiary of such person; or

[(ii) a statement that the person making the loan has previously assigned, sold, or transferred the servicing of federally related mortgage loans; and

[(C) if the person who makes the loan does not engage in the servicing of any federally related mortgage loans, that there is a present intent on the part of such person (at the time of such application) to assign, sell, or transfer the servicing of such loan to another person.

[(2) MODEL DISCLOSURE STATEMENTS.—Not later than 90 days after the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the Secretary shall develop a model disclosure statement for notification to applicants under paragraph (1) with respect to servicing procedures, transfer practices and requirements, and complaint resolution. The model statement shall provide for the person originating the loan to disclose their capacity to service loans and the best available estimate of the percentage of all loans made by such person for which the servicing will be assigned, sold, or transferred during the 12-month period beginning upon the origination. The estimate shall be expressed as one of the following range of possibilities—between 0 and 25 percent, between 26 and 50 percent, between 51 and 75 percent, or between 76 and 100 percent. This paragraph may not be construed to require the inclusion, in the estimate disclosed, of any loans the servicing of which will be assigned, sold, or transferred by the person originating the loan to a transferee servicer that is an affiliate or subsidiary of such person.

[(3) SIGNATURE OF APPLICANT.—Any disclosure of the information required under paragraph (1) shall not be effective for purposes of this section unless the disclosure is accompanied

by a written statement, in such form as the Secretary shall develop before the expiration of the 90-day period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, that the applicant has read and understood the disclosure and that is evidenced by the signature of the applicant at the place where such statement appears in the application.]

(a) DISCLOSURE TO APPLICANT RELATING TO ASSIGNMENT, SALE, OR TRANSFER OF LOAN SERVICING.—

(1) IN GENERAL.—Each person who makes a federally related mortgage loan shall disclose to each person who applies for any such loan, at the time of application for the loan, whether the servicing of any such loan may be assigned, sold, or transferred to any other person at any time while such loan is outstanding.

(2) SIGNATURE OF APPLICANT.—Any disclosure of the information required under paragraph (1) shall not be effective for purposes of this section unless the disclosure is accompanied by a written statement, in such form as the Secretary shall develop before the expiration of the 180-day period beginning on the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995, that the applicant has read and understood the disclosure and that is evidenced by the signature of the applicant at the place where such statement appears in the application.

* * * * * * *

(j) TRANSITION.—

(1) * * *

* * * * * * *

(3) REGULATIONS AND EFFECTIVE DATE.—The [Secretary] *Board* shall, by regulations that shall take effect not later than April 20, 1991, establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2).

SEC. 7. EXEMPTED TRANSACTIONS.

(a) IN GENERAL.—This Act does not apply to credit transactions involving extensions of credit—

(1) primarily for business, commercial, or agricultural purposes; or

(2) to government or governmental agencies or instrumentalities.

(b) INTERPRETATION.—In issuing regulations pursuant to section 19(a) of this Act, the Board shall ensure that, with regard to subsection (a), the exemption for business credit includes all business credit which is exempt from the Truth in Lending Act in accordance with section 226.3(a) of the regulations prescribed by the Board known as "regulation Z" (12 C.F.R. 226.3(a)), as in effect on the date of enactment of the Financial Institutions Regulatory Relief Act of 1995.

PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES

SEC. 8. (a) * * *

* * * * * * *

(c) Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (C) by a lender to its duly appointed agent for services actually performed in the making of a loan, (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed, (3) payments pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and brokers, (4) **[**controlled business arrangements**]** *affiliated business arrangements* so long as (A) at or prior to the time of the referral a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with the referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred, except that where a lender makes the referral, this requirement may be satisfied as part of and at the time that the estimates of settlement charges required under section 5(c) are provided, (B) such person is not required to use any particular provider of settlement services, and (C) the only thing of value that is received from the arrangement, other than the payments permitted under this subsection, is a return on the ownership interest or franchise relationship, or (5) such other payments or classes of payments or other transfers as are specified in regulations prescribed by the Secretary, after consultation with the Attorney General, the Secretary of Veterans Affairs, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Secretary of Agriculture. For purposes of the preceding sentence, the following shall not be considered a violation of clause (4)(B): (i) any arrangement that requires a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or (ii) any arrangement where an attorney or law firm represents a client in a real estate transaction issues or arranges for the issuance of a policy of title insurance in the transaction directly as agent or through a separate corporate title insurance agency that may be established by that attorney or law firm and operated as an adjunct to his or its law practice.

(d)(1) Any person or persons who *willfully* violate the provisions of this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

* * * * * * *

(3) No person or persons shall be liable for a violation of the provisions of section (8)(c)(4)(A) if such person or persons proves by a preponderance of the evidence that such violation **[**was not intentional and**]** resulted from a bona fide error notwithstanding maintenance of procedures that are reasonably adapted to avoid such error.

(4) The Secretary, *any other agency described in subsection (f)(1),* the Attorney General of any State, or the insurance commissioner of any State may bring an action to enjoin violations of this section.

* * * * * * *

(6) No provision of State law or regulation that imposes more stringent limitations on [controlled business arrangements] *affiliated business arrangements* shall be construed as being inconsistent with this section.

* * * * * * *

(e) NEGOTIATED REGULATIONS.—

(1) IN GENERAL.—The Secretary may not publish a proposed or final regulation under this section and section 9 after the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995 unless the Secretary has used the negotiated rulemaking procedure established under subchapter III of chapter 5 of title 5, United States Code, to attempt to negotiate and develop the rule.

(2) CONSISTENCY WITH PURPOSE.—Any regulation prescribed in accordance with paragraph (1) shall be consistent with the purposes of this title as set forth in section 2.

(f) ADMINISTRATIVE ENFORCEMENT.—

(1) IN GENERAL.—Compliance with the requirements of this section and sections 9 and 12 shall be enforced under this Act—

(A) in the case of an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), by the appropriate Federal banking agency (as defined in such section);

(B) in the case of an insured credit union (as defined in section 101(7) of the Federal Credit Union Act), by the National Credit Union Administration;

(C) in the case of a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956) and any affiliate of any such holding company (other than an insured depository institution), by the Board;

(D) in the case of a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act) and any affiliate of any such holding company (other than an insured depository institution), by the Director of the Office of Thrift Supervision; and

(E) in the case of any other person, by the Secretary.

(2) SPECIAL RULES RELATING TO DETERMINATION OF APPROPRIATE REGULATOR.—

(A) CASES OF MORE THAN 1 APPROPRIATE REGULATOR.—If, under paragraph (1), a company may be regulated by more than 1 agency, the Board shall determine which agency shall be the responsible agency, notwithstanding paragraph (1).

(B) CASES INVOLVING JOINT VENTURES, PARTNERSHIPS, AND OTHER AFFILIATED BUSINESS ARRANGEMENTS.—If any insured depository institution is involved in a joint venture, partnership, or other affiliated business arrangement with any person who is not an insured depository institution, the agency responsible for enforcing this section and sections 9

and 12 with respect to such insured depository institution shall be the agency with such responsibility with respect to such joint venture, partnership, or other affiliated business arrangement.

(3) INTERAGENCY COOPERATION AND ENFORCEMENT GUIDELINES.—All the agencies referred to in any subparagraph of paragraph (1) shall cooperate with each other to develop enforcement guidelines and other means for achieving effective compliance with this section and sections 9 and 12.

(4) PREFERENCE FOR CIVIL ENFORCEMENT OVER CRIMINAL ENFORCEMENT.—As part of the cooperative efforts required under paragraph (3), the agencies referred to in paragraph (1) shall consider means for achieving compliance with this section and section 9 through the exercise of administrative enforcement authority under this subsection without resorting to criminal enforcement actions under subsection (d) except in appropriate cases.

(5) EFFECTIVE DATE.—Paragraphs (1) and (2) shall not take effect until joint interagency cooperation and enforcement guidelines are adopted by all the agencies to which paragraphs (1) and (2) apply and the enforcement authority of the Secretary with respect to this section and sections 9 and 12 shall continue until such paragraphs take effect.

* * * * * * *

ESCROW ACCOUNTS

SEC. 10. (a) * * *

* * * * * * *

(c) ESCROW ACCOUNT STATEMENTS.—

(1) INITIAL STATEMENT.—

(A) * * *

* * * * * * *

(C) INITIAL STATEMENT AT CLOSING.—Any servicer may submit the statement required under subparagraph (A) to the borrower at closing and may incorporate such statement in the uniform settlement statement required under section 4. **[**Not later than the expiration of the 90-day period beginning on the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act, the**]** *The* Secretary shall issue regulations prescribing any changes necessary to the uniform settlement statement under section 4 that specify how the statement required under subparagraph (A) of this section shall be incorporated in the uniform settlement statement.

* * * * * * *

(d) PENALTIES.—

(1) IN GENERAL.—In the case of each failure to submit a statement to a borrower as required under subsection (c), the **[**Secretary**]** *Board* shall assess to the lender or escrow servicer failing to submit the statement a civil penalty of $50 for each such failure, but the total amount imposed on such lender or

escrow servicer for all such failures during any 12-month period referred to in subsection (b) may not exceed $100,000.

* * * * * * *

[ESTABLISHMENT ON DEMONSTRATION BASIS OF LAND PARCEL RECORDATION SYSTEM

[SEC. 13. The Secretary shall establish and place in operation on a demonstration basis, in representative political subdivisions (selected by him) in various areas of the United States, a model system or systems for the recordation of land title information in a manner and form calculated to facilitate and simplify land transfers and mortgage transactions and reduce the cost thereof, with a view to the possible development (utilizing the information and experience gained under this section) of a nationally uniform system of land parcel recordation.

[REPORT OF THE SECRETARY ON NECESSITY FOR FURTHER CONGRESSIONAL ACTION

[SEC. 14. (a) The Secretary, after consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, and after such study, investigation, and hearings (at which representatives of consumers' groups shall be allowed to testify) as he deems appropriate, shall, not less than three years nor more than five years from the effective date of this Act, report to the Congress on whether, in view of the implementation of the provisions of this Act imposing certain requirements and prohibiting certain practices in connection with real estate settlements, there is any necessity for further legislation in this area.

[(b) If the Secretary concludes that there is necessity for futher legislation, he shall report to the Congress on the specific practices or problems that should be the subject of such legislation and the corrective measures that need to be taken. In addition, the Secretary shall include in his report—

[(1) recommendations on the desirability of requiring lenders of federally related mortgage loans to bear the costs of particular real estate settlement services that would otherwise be paid for by borrowers;

[(2) recommendations on whether Federal regulation of the charges for real estate settlement services in federally related mortgage transactions is necessary and desirable, and, if he concludes that such regulation is necessary and desirable, a description and analysis of the regulatory scheme he believes Congress should adopt; and

[(3) recommendations on the ways in which the Federal Government can assist and encourage local governments to modernize their methods for the recordation of land title information, including the feasibility of providing financial assistance or incentives to local governments that seek to adopt one of the model systems developed by the Secretary in accordance with the provisons of section 13 of this Act.

[DEMONSTRATION TO DETERMINE FEASIBILITY OF INCLUDING STATEMENTS OF SETTLEMENT COSTS IN SPECIAL INFORMATION BOOKLETS

[SEC. 15. The Secretary shall, on a demonstration basis in selected housing market areas, have prepared and included in the special information booklets required to be furnished under section 5 of this Act, statements of the range of costs for specific settlement services in such areas. Not later than June 30, 1976, the Secretary shall transmit to the Congress a full report on the demonstration conducted under this section. Such report shall contain the Secretary's assessment of the feasibility of preparing and including settlement cost range statements for all housing market areas in the special information booklets for such areas.]

JURISDICTION OF COURTS

SEC. 16. Any action pursuant to the provisions of section 8 or 9 may be brought in the United States district court or in any other court of competent jurisdiction, for the district in which the property involved is located, or where the violation is alleged to have occurred, within one year from the date of the occurrence of the violation, except that actions brought by the [Secretary,] *Board, an agency referred to in any subparagraph of section 8(f)(1),* the Attorney General of any State, or the insurance commissioner of any State may be brought within 3 years from the date of the occurrence of the violation.

* * * * * * *

RELATION TO STATE LAWS

SEC. 18. This Act does not annul, alter, or affect, or exempt any person subject to the provisions of this Act from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this Act, and then only to the extent of the inconsistency. The [Secretary is authorized to] *Board and Secretary may jointly* determine whether such inconsistencies exist. The *Board and* Secretary may not determine that any State law is inconsistent with any provision of this Act if the *Board and* Secretary [determines] *determine* that such laws gives greater protection to the consumer. In making these determinations the *Board and* Secretary shall consult with the appropriate Federal agencies.

[AUTHORITY OF THE SECRETARY]

AUTHORITY OF THE SECRETARY AND THE FEDERAL RESERVE BOARD

SEC. 19. [(a) The Secretary is authorized to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of this Act.] *(a) REGULATIONS.—*

(1) IN GENERAL.—Subject to paragraph (2), the Secretary and the Board may prescribe such regulations, make such interpretations, and grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of this Act.

(2) APPLICATION.—

(A) BOARD.—The authority of the Board under paragraph (1) shall apply with respect to—

(i) sections 4, 5, 6, 10, and 12; and

(ii) sections 3, 7, 17, and 18 to the extent such sections are applicable with respect to the sections described in clause (i).

(B) SECRETARY.—The authority of the Secretary under paragraph (1) shall apply with respect to—

(i) sections 8 and 9; and

(ii) sections 3, 7, 17, and 18 to the extent such sections are applicable with respect to the sections described in clause (i).

(b) No provision of this Act or the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary, *the Board,* or the Attorney General, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(c)(1) The ⟦Secretary⟧ *Board, with respect to any action to enforce section 4, 5, 6, or 10, and each agency referred to in any subparagraph of section 8(f)(1), with respect to any action to enforce section 8, 9, or 12,* may investigate any facts, conditions, practices, or matters that may be deemed necessary or proper to aid in the enforcement of the provisions of this Act, in prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning real estate settlement practices. To aid in the investigations, the ⟦Secretary⟧ *Board or such other agency* is authorized to hold such hearings, administer such oaths, and require by subpena the attendance and testimony of such witnesses and production of such documents as the ⟦Secretary⟧ *Board or such other agency* deems advisable.

(2) Any district court of the United States within the jurisdiction of which an inquiry is carried on may, in the case of contumacy or refusal to obey a subpena of the ⟦Secretary⟧ *Board or an agency referred to in any subparagraph of section 8(f)(1)* issued under this section, issue an order requiring compliance therewith; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

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TRUTH IN LENDING ACT

TITLE I—CONSUMER CREDIT COST

* * * * * * *

CHAPTER 1—GENERAL PROVISIONS

* * * * * * *

§ 101. Short title

This title may be cited as the Truth in Lending Act.

* * * * * * *

§ 103. Definitions and rules of construction

(a) * * *

* * * * * * *

(aa)(1) A mortgage referred to in this subsection means a consumer credit transaction that is secured by *a subordinate mortgage on* the consumer's principal dwelling, other than [a residential mortgage transaction], a reverse mortgage transaction, or a transaction under an open end credit plan, if—

(A) * * *

* * * * * * *

§ 104. Exempted transactions

This title does not apply to the following:

(1) * * *

* * * * * * *

(7) Transactions for which the Board, by regulation, determines that coverage under the Act is not needed to carry out the purposes of the Act.

§ 105. Regulations

(a) * * *

(b) EXEMPTIVE AUTHORITY.—

(1) IN GENERAL.—The Board shall exempt from all or parts of this title any class of transactions for which, in the Board's judgment, coverage under all or part of this title does not provide a measurable benefit to consumers in the form of useful information or protection.

(2) FACTORS TO BE CONSIDERED.—In determining which classes of transactions to exempt in whole or in part, the Board shall consider, among other factors, the following:

(A) The amount of the loan or closing costs and whether the disclosures, right of rescission, and other provisions are necessary, particularly for small loans.

(B) Whether the requirements of this title complicate, hinder, or make more expensive the credit process for the class of transactions.

(C) The status of the borrower, including, the borrowers' related financial arrangements, the financial sophistication of the borrower relative to the type of transaction, and the importance of the credit and related supporting property to the borrower.

[(b)] *(c)* The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this title and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. In devising such forms, the Board shall consider the use by

creditors or lessors of data processing or similar automated equipment. Nothing in this title may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Board under this section. A creditor or lessor shall be deemed to be in compliance with the disclosure provisions of this title with respect to other than numerical disclosures if the creditor or lessor (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this title, or (B) rearranging the format, if in making such deletion or rearranging the format, the creditor or lessor does not affect the substance, clarity, or meaningful sequence of the disclosure.

[(c)] *(d)* Model disclosure forms and clauses shall be adopted by the Board after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

[(d)] *(e)* Any regulation of the Board, or any amendment or interpretation thereof, requiring any disclosure which differs from the disclosures previously required by this chapter, chapter 4, or chapter 5, or by any regulation of the Board promulgated thereunder shall have an effective date of that October 1 which follows by at least six months the date of promulgation, except that the Board may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements or shorten the length of time for creditors or lessors to make such adjustments when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. Notwithstanding the previous sentence, any creditor or lessor may comply with any such newly promulgated disclosure requirements prior to the effective date of the requirements.

§ 106. Determination of finance charge

(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. *The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not expressly require the imposition of the charges or the services provided and does not retain the charges.* Examples of charges which are included in the finance charge include any of the following types of charges which are applicable.

(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

(6) Mortgage broker fees.

* * * * * * *

[(c) Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.]

(c) TREATMENT OF CERTAIN DEBT CANCELLATION AND DEFICIENCY WAIVER CONTRACTS.—Charges or premiums for any insurance or for any voluntary noninsurance product, written in connection with any consumer credit transaction, that provides protections against loss of or damage to property or against part or all of the debtor's liability for amounts in excess of the value of the collateral securing the debtor's obligation, or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance or product if obtained from or through the creditor, and stating that the person to whom credit is extended may choose the person through which the insurance or product is to be obtained.

(d) If any of the following items is itemized and disclosed in accordance with the regulations of the Board in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) * * *

* * * * * * *

(3) Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.

(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) * * *

[(2) Fees for preparation of a deed, settlement statement, or other documents.]

(2) Fees for preparation of loan-related documents and for attending or conducting settlement.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees, *including fees related to pest infestations, premises and structural inspections, and flood hazards.*

(6) Credit reports.

(f) TOLERANCES FOR ACCURACY.—In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge—

(1) except as provided in paragraph (2), shall be treated as being accurate for purposes of this title if the amount disclosed as the finance charge—

(A) does not vary from the actual finance charge by more than an amount equal to ½ of the numerical tolerance corresponding to, and generated by, the tolerance provided by section 107(c) with respect to the annual percentage rate, but in no case may the tolerance under this paragraph be less than $25 or greater than $200; or

(B) is greater than the amount required to be disclosed under this title; and

(2) shall be treated as being accurate for purposes of section 125 if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to 0.5 percent of the total amount of credit extended.

* * * * * * *

§ 108. Administrative enforcement

(a) * * *

* * * * * * *

(e)(1) * * *

* * * * * * *

(3) Notwithstanding paragraph (2), no adjustment shall be ordered (A) if it would have a significantly adverse impact upon the safety or soundness of the creditor, but [in any such case, the agency may require] *in any such case, the agency may (i) require* a partial adjustment in an amount which does not have such an impact[, except that with respect to any transaction consummated after the effective date of section 608 of the Truth in Lending Simplification and Reform Act, the agency shall]*; or (ii)* require the full adjustment, but permit the creditor to make the required adjustment in partial payments over an extended period of time which the agency considers to be [reasonable,] *reasonable if, in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a), the agency determines that a partial adjustment or the making of partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized (as determined in accordance with regulations prescribed by such agency under section 38 of the Federal Deposit Insurance Act);* (B) if the amount of the adjustment would be less than $1, except that if more than one year has elapsed since the date of the violation, the agency may require that such amount be paid into the Treasury of the United States, or (C) except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in the case of an open-end credit plan, more than two years after the violation, or in the case of any other extension of credit, as follows:

(i) * * *

* * * * * * *

CHAPTER 2—CREDIT TRANSACTIONS

§ 121. General requirement of disclosure

(a) * * *

* * * * * * *

(c) The Board may provide by regulation that any portion of the information required to be disclosed by this title may be given in the form of estimates where the provider of such information is not in a position to know exact information. *In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this title if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.*

* * * * * * *

§ 125. Right of rescission as to certain transactions

(a) * * *

(b) When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge*, except any charge for an appraisal report or credit report*, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or **[**otherwise**]** *as otherwise required under this subsection*, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

* * * * * * *

(e) This section does not apply to—

(1) a residential mortgage transaction as defined in section 103(w);

(2) a transaction which constitutes a refinancing or consolidation (with no new advances), *other than a transaction described in subsection (e)(5),* of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

(3) a transaction in which an agency of a State is the creditor; **[**or**]**

(4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan**[**.**]***; or*

(5) a transaction, other than a mortgage referred to in section 103(aa), which—

(A) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in section 103(w), or is any subsequent refinancing of such a transaction; and

(B) does not provide any new consolidation or new advance.

* * * * * * *

(h) LIMITATION ON RESCISSION.—An obligor shall have no rescission rights arising from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Board, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor.

(i) RESCISSION RIGHTS IN FORECLOSURE.—

(1) IN GENERAL.—Notwithstanding section 139, and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, upon an action of a creditor to execute foreclosure on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if—

(A) a mortgage brokers fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Board or a comparable written notice, or was not properly completed by the creditor.

(2) TOLERANCE FOR DISCLOSURES.—Notwithstanding section 106(f), and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights following an action by a creditor to foreclose on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not

vary from the actual finance charge by more than $35 or is greater than the amount required to be disclosed under this title.

* * * * * * *

SEC. 127A. DISCLOSURE REQUIREMENTS FOR OPEN END CONSUMER CREDIT PLANS SECURED BY THE CONSUMER'S PRINCIPAL DWELLING.

(a) APPLICATION DISCLOSURES.—In the case of any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor shall make the following disclosures in accordance with subsection (b):

(1) FIXED ANNUAL PERCENTAGE RATE.—Each annual percentage rate imposed in connection with extensions of credit under the plan and a statement that such rate does not include costs other than interest.

(2) VARIABLE PERCENTAGE RATE.—In the case of a plan which provides for variable rates of interest on credit extended under the plan—

(A) * * *

* * * * * * *

(G) subject to subsection (b)(3), a table, based on a $10,000 extension of credit, showing how the annual percentage rate and the minimum periodic payment amount under each repayment option of the plan would have been affected during the preceding 15-year period by changes in any index used to compute such rate, *or a statement that the monthly payment may increase or decrease significantly due to increases in the annual percentage rate*;

* * * * * * *

(b) TIME AND FORM OF DISCLOSURES.—

(1) * * *

* * * * * * *

(3) REQUIREMENT FOR HISTORICAL TABLE.—In preparing the table [required under] *referred to in* subsection (a)(2)(G), the creditor shall consistently select one rate of interest for each year and the manner of selecting the rate from year to year shall be consistent with the plan.

* * * * * * *

§ 128. Consumer credit not under open end credit plans

(a) For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) * * *

* * * * * * *

(14) In any variable rate transaction secured by the consumer's principal dwelling with a term greater than 1 year, at the creditors' option, a statement that the monthly payment may increase or decrease substantially, or a historical example illus-

trating the effects of interest rate changes implemented according to the loan program.

(b)(1) * * *

* * * * * * *

(3) In the case of a residential mortgage transaction, the disclosures under subsection (a) shall include the following:

(A) The note rate and points, and a statement, if applicable, that these terms are subject to change.

(B) A statement that the creditor must include the disclosed note rate and points in the credit agreement unless, in relation to either or both of those terms—

(i) the disclosure clearly and conspicuously indicates that the term is subject to change, or

(ii) in the case of any term to which clause (i) does not apply—

(I) the creditor has clearly and conspicuously indicated that the term is conditioned on closing the transaction within a prescribed time;

(II) the creditor has promptly and clearly communicated to the consumer the information and documentation that the consumer is required to provide to the creditor; and

(III) the consumer has failed to provide such information and documentation within a reasonable time after receiving that communication.

* * * * * * *

§ 130. Civil liability

(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter, including any requirement under section 125, or chapter 4 or 5 of this title with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, [or] (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000*, or (iii) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than $250 or greater than $2,500*; or

* * * * * * *

§ 131. Liability of assignees

(a) * * *

* * * * * * *

(e) LIABILITY OF ASSIGNEE FOR CONSUMER CREDIT TRANSACTIONS SECURED BY REAL PROPERTY.—

(1) IN GENERAL.—Except as otherwise specifically provided in this title, any civil action against a creditor for a violation of this title, and any proceeding under section 108 against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if—

(A) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this title; and

(B) the assignment to the assignee was voluntary.

(2) VIOLATION APPARENT ON THE FACE OF THE DISCLOSURE DESCRIBED.—For the purpose of this section, a violation is apparent on the face of the disclosure statement if—

(A) the disclosure can be determined to be incomplete or inaccurate from the face of the disclosure statement, any itemization of the amount financed, or any other disclosure of disbursement; or

(B) the disclosure statement does not use the terms or format required to be used by this title.

(f) TREATMENT OF SERVICER.—

(1) IN GENERAL.—A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is the owner of the obligation.

(2) SERVICER NOT TREATED AS OWNER ON BASIS OF ASSIGNMENT FOR ADMINISTRATIVE CONVENIENCE.—A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

(3) SERVICER DEFINED.—For purposes of this subsection, the term "servicer" has the same meaning as in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974.

* * * * * * *

SEC. 139. CERTAIN LIMITATIONS ON LIABILITY.

(a) LIMITATIONS ON LIABILITY.—For any consumer credit transaction subject to this title that is consummated before the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995, a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under this title for, and a consumer shall have no extended rescission rights under section 125(f) with respect to—

(1) the creditor's treatment, for disclosure purposes, of—

(A) taxes described in section 106(d)(3);

(B) fees and amounts described in section 106(e) (2) and (5);

(C) fees and amounts referred to in the 3rd sentence of section 106(a); or

(D) mortgage broker fees referred to in section 106(a)(6);

(2) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 125 if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Board or a comparable written notice; or

(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed—

(A) may be treated as accurate pursuant to section 106(f), or

(B) is greater than the amount or percentage required to be disclosed under this title.

(b) EXCEPTIONS.—Subsection (a) shall not apply to—

(1) any individual action or counterclaim brought under this title which was filed before June 1, 1995;

(2) any class action brought under this title for which a final order certifying a class was entered before January 1, 1995;

(3) the named individual plaintiffs in any class action brought under this title which was filed before June 1, 1995; or

(4) any consumer credit transaction with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995.

SECTION 106 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

TECHNICAL ASSISTANCE, COUNSELING TO TENANTS AND HOMEOWNERS, AND LOANS TO SPONSORS OF LOW- AND MODERATE-INCOME HOUSING

SEC. 106. (a) * * *

* * * * * * *

(c) GRANTS FOR HOMEOWNERSHIP COUNSELING ORGANIZATIONS.—

(1) * * *

* * * * * * *

[(5) NOTIFICATION OF AVAILABILITY OF HOMEOWNERSHIP COUNSELING.—

[(A) NOTIFICATION OF AVAILABILITY OF HOMEOWNERSHIP COUNSELING.—

[(i) REQUIREMENT.—Except as provided in subparagraph (C), the creditor of a loan (or proposed creditor) shall provide notice under clause (ii) to (I) any eligible homeowner who fails to pay any amount by the date the amount is due under a home loan, and (II) any applicant for a mortgage described in paragraph (4).

[(ii) CONTENT.—Notification under this subparagraph shall—

[(I) notify the homeowner or mortgage applicant of the availability of any homeownership counseling offered by the creditor (or proposed creditor);

[(II) if provided to an eligible mortgage applicant, state that completion of a counseling program is required for insurance pursuant to section 203 of the National Housing Act; and

[(III) notify the homeowner or mortgage applicant of the availability of homeownership counseling provided by nonprofit organizations approved by the Secretary and experienced in the provision of homeownership counseling, or provide the toll-free telephone number described in subparagraph (D)(i).

[(B) DEADLINE FOR NOTIFICATION.—The notification required in subparagraph (A) shall be made—

[(i) in a manner approved by the Secretary; and

[(ii) before the expiration of the 45-day period beginning on the date on which the failure referred to in such subparagraph occurs.

[(C) EXCEPTIONS.—Notification under subparagraph (A) shall not be required with respect to any loan—

[(i) insured or guaranteed under chapter 37 of title 38, United States Code; or

[(ii) for which the eligible homeowner pays the amount overdue before the expiration of the 45-day period under subparagraph (B)(ii).

[(D) ADMINISTRATION AND COMPLIANCE.—The Secretary shall, to the extent of amounts approved in appropriation Acts, enter into an agreement with an appropriate private entity under which the entity will—

[(i) operate a toll-free telephone number through which any eligible homeowner can obtain a list of nonprofit organizations, which shall be updated annually, that—

[(I) are approved by the Secretary and experienced in the provision of homeownership counseling; and

[(II) serve the area in which the residential property of the homeowner is located;

[(ii) monitor the compliance of creditors with the requirements of subparagraphs (A) and (B); and

[(iii) report to the Secretary not less than annually regarding the extent of compliance of creditors with the requirements of subparagraphs (A) and (B).

[(E) REPORT.—The Secretary shall submit a report to the Congress not less than annually regarding the extent of compliance of creditors with the requirements of subparagraphs (A) and (B) and the effectiveness of the entity monitoring such compliance. The Secretary shall also include in the report any recommendations for legislative action to increase the authority of the Secretary to penalize creditors who do not comply with such requirements.]

* * * * * * *

HOME MORTGAGE DISCLOSURE ACT OF 1975

TITLE III—HOME MORTGAGE DISCLOSURE

SHORT TITLE

SEC. 301. This title may be cited as the "Home Mortgage Disclosure Act of 1975".

* * * * * * *

MAINTENANCE OF RECORDS AND PUBLIC DISCLOSURE

SEC. 304. (a) * * *

* * * * * * *

(m) OPPORTUNITY TO REDUCE COMPLIANCE BURDEN.—

(1) A depository institution will have satisfied the public availability requirements of subsection (a) if such institution keeps the information required under that subsection at its home office and provides notice at the branch locations specified in such subsection that such information is available upon request from the home office of the institution. A home office of the depository institution receiving a request for such information pursuant to this subsection shall provide the information pertinent to the location of the branch in question within fifteen days of the receipt of the written request.

(2) In complying with paragraph (1), a depository institution may provide the individual requesting such information, at the institution's choice, with—

(A) a paper copy of the information requested; or

(B) if acceptable to the individual, the information through a form of electronic medium, such as computer disc.

* * * * * * *

EFFECTIVE DATE

SEC. 309. This title shall take effect on the one hundred and eightieth day beginning after the date of its enactment. Any institution specified in section 303(2)(A) which has total assets as of its last full fiscal year of [$10,000,000] *$50,000,000* or less is exempt from the provisions of this title. The Board, in consultation with the Secretary, may exempt institutions described in section 303(2)(B) that are comparable within their respective industries to institutions that are exempt under the preceding sentence. *The Board may also, by regulation, exempt from the provisions of this Act institutions specified in section 303(2)(A) which have total assets as of their last full fiscal year of $50,000,000 or greater where the burden of complying with this Act on such institutions outweighs the usefulness of the information required to be disclosed. The exemptions provided under this section shall not be applicable to an institution which the Board, by order, has found a reasonable basis to believe is not fulfilling its obligations to serve the housing needs of the communities and neighborhoods in which it located. An institution subject to such an order shall be required to comply with the requirements of this Act for loans made after the time that the order*

is issued at such time and for such period as the Board deems appropriate. The dollar amount in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

* * * * * * *

COMMUNITY REINVESTMENT ACT OF 1977

TITLE VIII—COMMUNITY REINVESTMENT

SEC. 801. This title may be cited as the "Community Reinvestment Act of 1977".

SEC. 802. (a) * * *

[(b) It is the purpose of this title to require each appropriate Federal financial supervisory agency to use its authority when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.]

(b) It is the purpose of this title to require each appropriate Federal financial supervisory agency to use its authority, when examining financial institutions, to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions. When examining financial institutions, a supervisory agency shall not impose additional burden, recordkeeping, or reporting upon such institutions.

SEC. 803. For the purposes of this title—

(1) the term "appropriate Federal financial supervisory agency" means—

(A) the Comptroller of the Currency with respect to national banks;

* * * * * * *

[(2) section 8 of the Federal Deposit Insurance Act, by the Director of the Office of Thrift Supervision, in the case of a savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and a savings and loan holding company;]

(D) the Director of the Office of Thrift Supervision with respect to any savings association (the deposits of which are insured by the Federal Deposit Insurance Corporation) and any savings and loan holding company (other than a company which is a bank holding company);

* * * * * * *

(5) SPECIAL PURPOSE INSTITUTIONS.—The term "special purpose institution" means a financial institution that does not generally accept deposits from the public in amounts of less than $100,000, such as wholesale, credit card, and trust institutions.

(6) STATE BANK SUPERVISOR.—The term "State bank supervisor" has the same meaning as in section 3(r) of the Federal Deposit Insurance Act.

SEC. 804. (a) IN GENERAL.—In connection with its examination of a financial institution, *conducted in accordance with section 806A,* the appropriate Federal financial supervisory agency shall—

(1) assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution; and

[(2) take such record into account in its evaluation of an application for a deposit facility by such institution.**]**

(2) take such record into account in the overall evaluation of the condition of the institution by the appropriate Federal financial supervisory agency.

[(b) MAJORITY-OWNED INSTITUTIONS.—In assessing and taking into account, under subsection (a), the record of a nonminority-owned and nonwomen-owned financial institution, the appropriate Federal financial supervisory agency may consider as a factor capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions provided that these activities help meet the credit needs of local communities in which such institutions and credit unions are chartered.**]**

(b) POSITIVE CONSIDERATION OF CERTAIN LOANS AND INVESTMENTS.—In assessing and taking into account the records of a regulated financial institution under subsection (a), the appropriate Federal financial supervisory agency shall—

(1) consider as a positive factor, consistent with the safe and sound operation of the institution, the institution's investment in or loan to—

(A) any minority depository institution or women's depository institution (as such terms are defined in section 808(b)) or any low-income credit union;

(B) any joint venture or other entity or project which promotes the public welfare in any distressed community (as defined by such agency) whether or not the distressed community is located in the local community in which the regulated financial institution is chartered to do business; and

(C) targeted low- and moderate-income communities, including real property loans to such communities; and

(2) consider equally with other factors capital investment, loan participation, and other ventures undertaken by the institution in cooperation with—

(A) minority- and women-owned financial institutions and low-income credit unions to the extent that these activities help meet the credit needs of the local communities in which such institutions are chartered; and

(B) community development corporations in extending credit and other financial services principally to low- and moderate-income persons and small businesses to the extent that such community development corporations help meet the credit needs of the local communities served by the majority-owned institution.

(c) SELF-CERTIFICATION OF CRA COMPLIANCE.—

(1) CERTIFICATION.—In lieu of being evaluated under section 806A and receiving a written evaluation under section 807, a qualifying financial institution may elect to self-certify to the appropriate Federal financial supervisory agency that such institution is in compliance with the goals of this title.

(2) QUALIFYING INSTITUTION.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "qualifying institution" means a financial institution which—

(i) has not more than $250 million in assets;

(ii) has not been found to have engaged in a pattern or practice of illegal discrimination under the Fair Housing Act or the Equal Credit Opportunity Act for the preceding 5-year calendar period; and

(iii) received rating under section 807(b)(2) of "satisfactory" or "outstanding" in the most recent evaluation of such institution under this title.

(B) ANNUAL ADJUSTMENT.—The dollar amount in subparagraph (A) shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

(3) PUBLIC NOTICE.—

(A) IN GENERAL.—A qualifying institution shall maintain in every branch a public notice stating that—

(i) the institution has self-certified that the institution is satisfactorily helping to meet the credit needs of its community; and

(ii) the institution maintains—

(I) at the main office of such institution, a public file which contains a copy of the self-certification to the appropriate Federal financial supervisory agency; and

(II) a map delineating the community served by the institution;

(iii) a list of the types of credit and services that the institution provides to the community served by the institution;

(iv) such other information that the institution believes demonstrates the institution's record of helping to meet the credit needs of its community; and

(v) every public comment or letter to the institution (and any response by the institution) received within the previous 2-year period about the record of the institution of helping to meet the credit needs of its community.

(B) PUBLIC FILE.—A qualifying institution shall maintain a public file containing the contents described in this paragraph at the institution's main office

(4) RATING.—

(A) IN GENERAL.—A qualifying institution shall be deemed to have a rating of a "satisfactory record of meeting

community credit needs" for the purposes of this section and section 806A(c).

(B) PUBLICATION.—Each Federal financial supervisory agency shall publish in the Federal Register once each month a list of institutions that have self-certified during the previous month.

(C) PUBLICATION CONSTITUTES DISCLOSURE.—Publication of the name of the institution in the Federal Register as having self-certified shall constitute disclosure of the rating of the institution to the public for purposes of sections 806A and 807.

(5) REGULATORY REVIEW.—

(A) ASSESSMENT.—During each examination for safety and soundness, a qualifying institution's supervisory agency shall, as part of the agency's review of the institution's loans, assess whether the institution's basis for its self-certification is reasonable based on the public notice and the information contained in the public file pursuant to paragraph (3).

(B) EXAMINATION IF SELF-CERTIFICATION IS NOT REASONABLE.—If the agency determines that the institution's basis for the institution's self-certification is not reasonable, the agency shall schedule an examination of the institution for the purpose of assessing the institution's record of helping to meet the credit needs of its community.

(C) REVOCATION OF SELF-CERTIFICATION.—If an assessment pursuant to subparagraph (B) results in a less than "satisfactory" rating, the agency shall revoke the institution's self-certification and substitute a written evaluation as provided under section 807.

(D) PERIOD OF INELIGIBILITY FOR SELF-CERTIFICATION.—An institution whose self-certification has been revoked may not self-certify pursuant to this subsection during the 5 years succeeding the year in which the self-certification is revoked.

(E) SUBSEQUENT ELIGIBILITY.—After the end of the period of ineligibility described in subparagraph (D), an institution which meets the requirements for self-certification may elect to self-certify.

(6) PROHIBITION ON ADDITIONAL REQUIREMENTS.—No appropriate Federal financial supervisory agency may impose any additional requirements, whether by regulation or otherwise, relating to the self-certification procedure under this subsection.

(d) SPECIAL PURPOSE INSTITUTIONS.—

(1) IN GENERAL.—In conducting assessments pursuant to this section at any special purpose institution, the appropriate Federal financial supervisory agency shall—

(A) consider the nature of business such institution is involved in; and

(B) assess and take into account the record of the institution commensurate with the amount of deposits (as defined in section 3(1) of the Federal Deposit Insurance Act) received by such institution.

(2) STANDARDS.—Each appropriate Federal financial supervisory agency shall develop standards under which special purpose institutions may be deemed to have complied with the requirements of this title which are consistent with the specific nature of such businesses.

* * * * * * *

[SEC. 806. Regulations to carry out the purposes of this title shall be published by each appropriate Federal financial supervisory agency, and shall take effect no later than 390 days after the date of enactment of this title.]

SEC. 806. REGULATIONS.

(a) IN GENERAL.—

(1) PUBLICATION REQUIREMENT.—Regulations to carry out the purposes of this title shall be published by each appropriate Federal financial supervisory agency.

(2) PROHIBITION ON ADDITIONAL RECORDKEEPING.—Regulations prescribed and policy statements, commentary, examiner guidance, or other supervisory material issued under this title shall not impose any additional recordkeeping on a financial institution.

(3) PROHIBITION ON LOAN DATA COLLECTION.—No loan data may be required to be collected and reported by a financial institution and no such data may be made public by any Federal financial supervisory agency under this title.

(b) LIMITATION ON REGULATIONS.—No regulation may be prescribed under this title by any Federal agency which would—

(1) require any regulated financial institution to—

(A) make any loan or enter into any other agreement on the basis of any discriminatory criteria prohibited under any law of the United States; or

(B) make any loan to, or enter into any other agreement with, any uncreditworthy person that would jeopardize the safety and soundness of such institution; or

(2) prevent or hinder in any way a financial institution's full responsibility to provide credit to all segments of the community.

(c) ENCOURAGE LOANS TO CREDITWORTHY BORROWERS.—Regulations prescribed under this title shall encourage regulated financial institutions to make loans and extend credit to all creditworthy persons, consistent with safety and soundness.

* * * * * * *

SEC. 806A. COMMUNITY INPUT AND CONCLUSIVE RATING.

(a) PUBLICATION OF EXAM SCHEDULE AND OPPORTUNITY FOR COMMENT.—

(1) PUBLICATION OF NOTICE.—Each appropriate Federal financial supervisory agency shall

(A) publish in the Federal Register, 30 days before the beginning of a calendar quarter, a listing of institutions scheduled for evaluation for compliance with this title during such calendar quarter; and

(B) provide opportunity for written comments from the community on the performance, under this title, of each institution scheduled for evaluation.

(2) COMMENT PERIOD.—Written comments may not be submitted to an appropriate Federal financial supervisory agency pursuant to paragraph (1) after the end of the 30-day period beginning on the first day of the calendar quarter.

(3) COPY OF COMMENTS.—The agency shall provide a copy of such comments to the institution.

(b) EVALUATION.—The appropriate Federal financial supervisory agency shall—

(1) evaluate the institution in accordance with the standards contained in section 804; and

(2) prepare and publish a written evaluation of the institution as required under section 807.

(c) RECONSIDERATION OF RATING.—

(1) REQUEST FOR RECONSIDERATION.—A reconsideration of an institution's rating referred to in section 807(b)(1)(C), may be requested within 30 days of the rating's disclosure to the public.

(2) PROCEDURES FOR REQUEST.—Any such request shall be made in writing and filed with the appropriate Federal financial supervisory agency, and may be filed by the institution or a member of the community.

(3) BASIS FOR REQUEST.—Any request for reconsideration under this subsection shall be based on significant issues of a substantive nature which are relevant to the delineated community of the institution and, in the case of a request by a member of the community, shall be limited to issues previously raised in comments submitted pursuant to subsection (a).

(4) COMPLETION OF REVIEW.—The appropriate Federal financial supervisory agency shall complete any requested reconsideration within 30 days of the filing of the request.

(d) CONCLUSIVE RATING.—

(1) IN GENERAL.—An institution's rating shall become conclusive on the later of—

(A) 30 days after the rating is disclosed to the public; or

(B) the completion of any requested reconsideration by the Federal financial supervisory agency.

(2) RATING CONCLUSIVE OF MEETING COMMUNITY CREDIT NEEDS.—An institution's rating shall be the conclusive assessment of the institution's record of meeting the credit needs of its community for purposes of section 804 until the institution's next rating, developed pursuant to an examination, becomes conclusive.

(3) SAFE HARBOR.—Institutions which have received a "satisfactory" or "outstanding" rating shall be deemed to have met the purposes of section 804.

(4) RULE OF CONSTRUCTION.—Notwithstanding any other provision of law, no provision of this section shall be construed as granting a cause of action to any person.

SEC. 807. WRITTEN EVALUATIONS.

(a) * * *

(b) PUBLIC SECTION OF REPORT.—

(1) FINDINGS AND CONCLUSIONS.—

(A) * * *

(B) METROPOLITAN AREA DISTINCTIONS.—[The information] *In the case of a regulated financial institution that maintains domestic branches in 2 or more States, the information* required by clauses (i) and (ii) of subparagraph (A) shall be presented separately for each metropolitan area in which a regulated depository institution maintains one or more domestic branch offices.

* * * * * * *

SEC. 809. EXAMINATION EXEMPTION.

(a) IN GENERAL.—A regulated financial institution shall not be subject to the examination requirements of this title or any regulations issued under this section if the institution and any bank holding company which controls such institution have aggregate assets of not more than $100,000,000.

(b) ANNUAL ADJUSTMENT.—The dollar amount in subsection (a) shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

FEDERAL HOME LOAN BANK ACT

* * * * * * *

ELIGIBILITY OF MEMBERS AND NONMEMBER BORROWERS

SEC. 4. (a) * * *

[(b) An institution eligible to become a member under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of the Board.]

(b) MEMBERSHIP BASED ON CONVENIENCY.—An institution eligible to become a member of a Federal home loan bank under this section may become a member by submitting the institution's application for membership to the bank in the district where the applicant's principal place of business is located. An application for membership shall be approved by the bank if, in the judgment of the bank, the applicant meets the criteria for eligibility contained in this section. An institution eligible to become a member under this section may apply for membership in an adjoining district, if appropriate for the convenience of the institution and then only with the approval of the Board.

* * * * * * *

ADVANCES TO MEMBERS

SEC. 10. (a) * * *

* * * * * * *

(g) COMMUNITY SUPPORT REQUIREMENTS.—

(1) * * *

* * * * * * *

(3) SPECIAL RULE.—This subsection shall not apply to members receiving a grade of "outstanding" or "satisfactory" under section 807 of the Community Reinvestment Act of 1977.

* * * * * * *

GENERAL POWERS AND DUTIES OF BANKS

SEC. 11. (a) * * *

* * * * * * *

[(j) Notwithstanding the provisions of the first sentence of section 202 of the Government Corporation Control Act, audits by the General Accounting Office of the financial transactions of a Federal Home Loan Bank shall not be limited to periods during which Government capital has been invested therein. The provisions of the first sentence of subsection (d) of section 303 of the Government Corporation Control Act shall not apply to any Federal Home Loan Bank.**]**

(j) AUDITS.—

(1) Notwithstanding any other provision of law, audits by the Comptroller General of the United States of the financial transactions of a Federal home loan bank shall not be limited to periods during which Government capital has been invested in the bank. The provisions of section 9107(c)(2) and 9108(d)(1) of title 31, of such Code, shall not apply to any Federal home loan bank.

(2) Notwithstanding any other provision of law, the Board shall not participate in the hiring of an external auditor by the banks; except, that the Board may establish requirements for external audit contracts and, that all 12 banks shall contract for an annual audit with a single provider.

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FEDERAL DEPOSIT INSURANCE ACT

* * * * * * *

SEC. 3. As used in this Act—

(a) * * *

* * * * * * *

[(o) The term**]** *(o) DEFINITIONS RELATING TO BRANCHES.—*

(1) DOMESTIC BRANCH.—

(A) IN GENERAL.—The term "domestic branch" includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money **[**lent; and the term**]** *lent.*

(B) CERTAIN PROPRIETARY ATMS AND REMOTE SERVICING UNITS.—The term "domestic branch" does not include any

automated teller machine or remote service unit which is owned and operated by a depository institution—

(i) primarily for the benefit of the institution and the affiliates of the institution; and

(ii) which could operate a branch at the location of such machine or unit.

(2) FOREIGN BRANCH.—The term "foreign branch" means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, or the Virgin Islands, at which banking operations are conducted.

* * * * * * *

(u) INSTITUTION-AFFILIATED PARTY.—The term "institution-affiliated party" means—

(1) any director *(other than an outside director)*, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution;

* * * * * * *

(3) any shareholder (other than a bank holding company), consultant, joint venture partner, and any other person *(other than an outside director)* as determined by the appropriate Federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution; and

(4) any independent contractor (including any attorney, appraiser, or accountant) *or outside director* who knowingly or recklessly participates in—

(A) * * *

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SEC. 5. DEPOSIT INSURANCE.

(a) * * *

* * * * * * *

(d) INSURANCE FEES.—

(1) * * *

* * * * * * *

(3) OPTIONAL CONVERSIONS SUBJECT TO SPECIAL RULES ON DEPOSIT INSURANCE PAYMENTS.—

(A) CONVERSIONS ALLOWED.—Notwithstanding paragraph (2)(A), and subject to the requirements of this paragraph, any insured depository institution may participate in a transaction described in clause (ii), (iii), or (iv) of paragraph (2)(B) **[**with the prior written approval of the responsible agency under section 18(c)(2)**]**.

* * * * * * *

(E) CONDITIONS **[**FOR APPROVAL, GENERALLY**]**.—

[(i) FACTORS TO BE CONSIDERED; APPROVAL PROCESS.—In reviewing any application for a proposed transaction under subparagraph (A), the responsible agency shall follow the procedures and consider the factors set forth in section 18(c).

[(ii) INFORMATION REQUIRED.—An application to engage in any transaction under this paragraph shall contain such information relating to the factors to be considered for approval as the responsible agency may require, by regulation or by specific request, in connection with any particular application.

[(iii)] *(i)* NO TRANSFER OF DEPOSIT INSURANCE PERMITTED.—This paragraph shall not be construed as authorizing transactions which result in the transfer of any insured depository institution's Federal deposit insurance from 1 Federal deposit insurance fund to the other Federal deposit insurance fund.

[(iv) MINIMUM CAPITAL.—The responsible agency shall disapprove any application for any transaction under this paragraph unless such agency determines that the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction.]

(ii) A transaction shall not be authorized under this paragraph unless the acquiring, assuming, or resulting depository institution will meet all applicable capital requirements upon consummation of the transaction.

* * * * * * *

[(G) EXPEDITED APPROVAL OF ACQUISITIONS.—

[(i) IN GENERAL.—Any application by a State nonmember insured bank to acquire another insured depository institution that is required to be filed with the Corporation by subparagraph (A) or any other applicable law or regulation shall be approved or disapproved in writing by the Corporation before the end of the 60-day period beginning on the date such application is filed with the Corporation.

[(ii) EXTENSIONS OF PERIOD.—The period for approval or disapproval referred to in clause (i) may be extended for an additional 30-day period if the Corporation determines that—

[(I) an applicant has not furnished all of the information required to be submitted; or

[(II) in the Corporation's judgment, any material information submitted is substantially inaccurate or incomplete.

[(H)] *(G)* ALLOCATION OF COSTS IN EVENT OF DEFAULT.—If any acquiring, assuming, or resulting depository institution is in default or danger of default at any time before this paragraph ceases to apply, any loss incurred by the Corporation shall be allocated between the Bank Insurance Fund and the Savings Association Insurance Fund, in amounts reflecting the amount of insured deposits of such acquiring, assuming, or resulting depository institution assessed by the Bank Insurance Fund and the Savings Association Insurance Fund, respectively, under subparagraph (B).

[(I)] *(H)* SUBSEQUENT APPROVAL OF CONVERSION TRANSACTION.—This paragraph shall cease to apply if—

(i) after the end of the moratorium period established by paragraph (2)(A), the Corporation approves an application by any acquiring, assuming, or resulting depository institution to treat the transaction described in subparagraph (A) as a conversion transaction; and

(ii) the acquiring, assuming, or resulting depository institution pays the amount of any exit and entrance fee assessed by the Corporation under subparagraph (E) of paragraph (2) with respect to such transaction.

[(J)] *(I)* ACQUIRING, ASSUMING, OR RESULTING DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term ''acquiring, assuming, or resulting depository institution'' means any insured depository institution which—

(i) results from any transaction described in paragraph (2)(B)(ii) and approved under this paragraph;

* * * * * * *

SEC. 7. (a) * * *

* * * * * * *

[(k) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or any executive officer or prinicipal shareholder thereof concerning extensions of credit by the bank to any of its executive officers or principal shareholders, or the related interests of such persons.]

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SEC. 10. (a) * * *

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(d) ANNUAL ON-SITE EXAMINATIONS OF ALL INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

(1) * * *

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(8) REPORT.—At the time the system provided for in paragraph (6) is established, the Federal banking agencies shall submit a joint report describing the system to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives. Thereafter, the Federal banking agencies shall annually submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives regarding the progress of the agencies in implementing the system and indicating areas in which enhancements to the system, including legislature improvements, would be appropriate.

[(8)] *(9)* AGENCIES AUTHORIZED TO INCREASE MAXIMUM ASSET AMOUNT OF INSTITUTIONS FOR CERTAIN PURPOSES.—At any time after the end of the 2-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, the appropriate Federal banking

agency, in the agency's discretion, may increase the maximum amount limitation contained in paragraph (4)(C)(ii), by regulation, from $100,000,000 to an amount not to exceed [$175,000,000] *$250,000,000* for purposes of such paragraph, if the agency determines that the greater amount would be consistent with the principles of safety and soundness for insured depository institutions.

[(9)] *(10)* STANDARDS FOR DETERMINING ADEQUACY OF STATE EXAMINATIONS.—The Federal Financial Institutions Examination Council shall issue guidelines establishing standards to be used at the discretion of the appropriate Federal banking agency for purposes of making a determination under paragraph (3).

(11) ANNUAL CPI ADJUSTMENT.—The dollar amount in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

* * * * * * *

(j) CONSULTATION AMONG EXAMINERS.—

(1) IN GENERAL.—Each appropriate Federal banking agency shall take such action as may be necessary to ensure that examiners employed by the agency—

(A) consult on examination activities with respect to any depository institution; and

(B) achieve an agreement and resolve any inconsistencies on the recommendations to be given to such institution as a consequence of any examinations.

(2) EXAMINER-IN-CHARGE.—Each agency shall consider appointing an examiner-in-charge with respect to a depository institution to ensure consultation on examination activities among all of the agency's examiners involved in examinations of such institution.

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SEC. 18. (a) * * *

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(c)(1) * * *

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(12) The provisions of this subsection shall not apply to any merger, consolidation, acquisition of assets or assumption of liabilities involving only insured depository institutions that are subsidiaries of the same depository institution holding company if—

(A) the responsible agency would not be prohibited from approving the transaction under section 44, if applicable;

(B) the acquiring, assuming, or resulting institution complies with all applicable provisions of section 44, if any, as if the merger, consolidation, or acquisition were approved under this subsection;

(C) the acquiring, assuming, or resulting institution provides written notification of the transaction to the appro-

priate Federal banking agency for the institution at least 10 days prior to consummation of the transaction; and

(D) after receiving such notice, the agency does not require the institution to submit an application with respect to such transaction and so notifies the institution.

(d)(1) * * *

* * * * * * *

(5) APPLICATION EXEMPTION FOR CERTAIN BANKS.—Notwithstanding paragraph (1), the consent of the Corporation shall not be required for a State nonmember insured bank to establish and operate any domestic branch if—

(A) the bank is well-capitalized (as defined in section 38 and regulations prescribed by the Corporation under such section);

(B) the bank received a composite CAMEL rating of "1" or "2" under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination;

(C) the bank did not receive a "needs to improve" or "substantial noncompliance" composite rating as result of the bank's most recent examination under the Community Reinvestment Act of 1977; and

(D) the Corporation is otherwise authorized to give consent under this section to such bank to establish and operate a domestic branch at the proposed location.

(6) APPROVAL GRANTED.—A branch established by a State member bank under paragraph (5) shall be deemed to have been established and operated pursuant to an application approved under this section.

* * * * * * *

(s) CUSTOMER ACCESS TO PRODUCTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any depository institution, or any affiliate or subsidiary of any depository institution, may share or exchange information or otherwise transfer information between or among themselves without any restriction or limitation if it is clearly and conspicuously disclosed that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons.

(2) DEFINITION.—For purposes of this subsection, the term "information" means any and all data, records, or other information and material obtained or maintained by any depository institution or any affiliate or subsidiary thereof in the ordinary course of its business that relates in any way to a person (as such term is defined in section 603(b) of the Fair Credit Reporting Act) who applies for, maintains, or has maintained an account or credit relationship with or applied for, purchased or obtained other products or services from any depository institution or any affiliate or subsidiary of any depository institution, regardless of the source of manner in which the information is obtained or furnished.

(3) RULE OF CONSTRUCTION.—Any depository institution, or any affiliate or subsidiary of any depository institution, relying on this subsection shall not be deemed to be a consumer reporting agency, user, or third party, and the information itself shall not constitute a consumer report, within the meaning of the Fair Credit Reporting Act or other similar law.

* * * * * * *

SEC. 24. ACTIVITIES OF INSURED STATE BANKS.

[(a) IN GENERAL.—After the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, an insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

[(1) the Corporation has determined that the activity would pose no significant risk to the appropriate deposit insurance fund; and

[(2) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.]

(a) ACTIVITIES GENERALLY.—

(1) IN GENERAL.—An insured State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

(A) the bank has given the Corporation written notice of the bank's intention to engage in such activity at least 60 days before commencing to engage in the activity and within such 60-day period (or within the extended period provided under paragraph (2)) the Corporation has not disapproved the activity; and

(B) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(2) EXTENSION OF PERIOD.—The Corporation may extend the 60-day period referred to in paragraph (1) for issuing a notice of disapproval with respect to any activity for an additional 30 days.

(3) CONTENTS OF NOTICE.—Any notice submitted by a State bank under paragraph (1)(A) shall contain such information as the Corporation may require.

(4) BASIS FOR DISAPPROVAL.—The Corporation may disapprove an activity for a State bank under this subsection unless the Corporation determines that the activity would pose no significant risk to the appropriate insurance fund.

* * * * * * *

(d) SUBSIDIARIES OF INSURED STATE BANKS.—

[(1) IN GENERAL.—After the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, a subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

[(A) the Corporation has determined that the activity poses no significant risk to the appropriate deposit insurance fund; and

[(B) the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.]

(1) ACTIVITIES GENERALLY.—

(A) IN GENERAL.—A subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

(i) the subsidiary has given the Corporation written notice of the subsidiary's intention to engage in such activity at least 60 days before commencing to engage in the activity and within such 60-day period (or within the extended period provided under paragraph (2)) the Corporation has not disapproved the activity; and

(ii) the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(B) EXTENSION OF PERIOD.—The Corporation may extend the 60-day period referred to in subparagraph (A) for issuing a notice of disapproval with respect to any activity for an additional 30 days.

(C) CONTENTS OF NOTICE.—Any notice submitted by a subsidiary of an insured State bank under subparagraph (A)(i) shall contain such information as the Corporation may require.

(D) BASIS FOR DISAPPROVAL.—The Corporation may disapprove an activity for a subsidiary of an insured State bank under this paragraph unless the Corporation determines that the activity would pose no significant risk to the appropriate insurance fund.

* * * * * * *

SEC. 32. AGENCY DISAPPROVAL OF DIRECTORS AND SENIOR EXECUTIVE OFFICERS OF INSURED DEPOSITORY INSTITUTIONS OR DEPOSITORY INSTITUTION HOLDING COMPANIES.

(a) * * *

* * * * * * *

[(d) ADDITIONAL INFORMATION.—Any notice submitted to an appropriate Federal banking agency with respect to an individual by any insured depository institution or depository institution holding company pursuant to subsection (a) shall include—

[(1) the information described in section 7(j)(6)(A) about the individual; and

[(2) such other information as the agency may prescribe by regulation.]

(d) ADDITIONAL INFORMATION.—

(1) IN GENERAL.—Any notice submitted to an appropriate Federal banking agency with respect to an individual by any insured depository institution or depository institution holding company pursuant to subsection (a) shall include—

(A) the information described in section 7(j)(6)(A) about the individual; and

(B) such other information as the agency may prescribe by regulation.

(2) WAIVER.—An appropriate Federal banking agency may waive the requirement of this section by regulation or on a case-by-case basis consistent with safety and soundness.

* * * * * * *

SEC. 36. EARLY IDENTIFICATION OF NEEDED IMPROVEMENTS IN FINANCIAL MANAGEMENT.

(a) ANNUAL REPORT ON FINANCIAL CONDITION AND MANAGEMENT.—

(1) * * *

(2) CONTENTS OF REPORT.—Any annual report required under paragraph (1) shall contain—

(A) the information required to be provided by—

(i) the institution's management under subsection (b); and

(ii) an independent public accountant under [subsections (c) and (d)] *subsection (c)*; and

(3) PUBLIC AVAILABILITY.—Any annual report required under paragraph (1) shall be available for public inspection. *Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.*

* * * * * * *

[(c) INTERNAL CONTROL EVALUATION AND REPORTING REQUIREMENTS FOR INDEPENDENT PUBLIC ACCOUNTANTS.—

[(1) IN GENERAL.—With respect to any internal control report required by subsection (b)(2) of any institution, the institution's independent public accountant shall attest to, and report separately on, the assertions of the institution's management contained in such report.

[(2) ATTESTATION REQUIREMENTS.—Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

[(d)] *(c)* ANNUAL INDEPENDENT AUDITS OF FINANCIAL STATEMENTS.—

(1) AUDITS REQUIRED.—The Corporation, in consultation with the appropriate Federal banking agencies, shall prescribe regulations requiring that each insured depository institution shall have an annual independent audit made of the institution's financial statements by an independent public accountant in accordance with generally accepted auditing standards and section 37.

* * * * * * *

[(e) DETECTING AND REPORTING VIOLATIONS OF LAWS AND REGULATIONS.—

[(1) IN GENERAL.—An independent public accountant shall apply procedures agreed upon by the Corporation to objectively determine the extent of the compliance of any insured deposi-

tory institution or depository institution holding company with laws and regulations designated by the Corporation, in consultation with the appropriate Federal banking agencies.

[(2) ATTESTATION REQUIREMENTS.—Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

[(f)] *(d)* FORM AND CONTENT OF REPORTS AND AUDITING STANDARDS.—

(1) IN GENERAL.—The scope of each report by an independent public accountant pursuant to this section, and the procedures followed in preparing such report, shall meet or exceed the scope and procedures required by generally accepted auditing standards and other applicable standards recognized by the Corporation.

* * * * * * *

[(g)] *(e)* IMPROVED ACCOUNTABILITY.—

(1) INDEPENDENT AUDIT COMMITTEE.—

(A) ESTABLISHMENT.—Each insured depository institution (to which this section applies) shall have an independent audit committee entirely made up of outside directors who are independent of management of the institution, and who satisfy any specific requirements the Corporation may establish.

(B) DUTIES.—An independent audit committee's duties shall include reviewing with management and the independent public accountant the basis for the reports issued under subsections [(b)(2), (c), and (d)] *(b)(2) and (c)*.

* * * * * * *

[(h)] *(f)* EXCHANGE OF REPORTS AND INFORMATION.—

(1) REPORT TO THE INDEPENDENT AUDITOR.—

(A) IN GENERAL.—Each insured depository institution which has engaged the services of an independent auditor to audit such institution shall transmit to the auditor a copy of the most recent report of condition made by the institution (pursuant to this Act or any other provision of law) and a copy of the most recent report of examination received by the institution.

* * * * * * *

[(i)] *(g)* REQUIREMENTS FOR INSURED SUBSIDIARIES OF HOLDING COMPANIES.—

(1) IN GENERAL.—Except with respect to any audit requirements established under or pursuant to subsection [(d)] *(c)*, the requirements of this section may be satisfied for insured depository institutions that are subsidiaries of a holding company, if—

(A) * * *

* * * * * * *

[(j)] *(h)* EXEMPTION FOR SMALL DEPOSITORY INSTITUTIONS.—This section shall not apply with respect to any fiscal year of any insured depository institution the total assets of which, as of the beginning of such fiscal year, are less than the greater of—

(1) * * *

* * * * * * *

(i) EXEMPTION FOR WELL-CAPITALIZED AND WELL-MANAGED INSURED DEPOSITORY INSTITUTIONS.—No provision of this section other than subsection (c) shall apply with respect to any insured depository institution which is well-capitalized and well-managed.

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SEC. 42. NOTICE OF BRANCH CLOSURE.

(a) * * *

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(e) SCOPE OF APPLICATION.—

(1) IN GENERAL.—This section shall not apply with respect to—

(A) an automated teller machine;

(B) a branch which—

(i) has been acquired through merger, consolidation, purchase, assumption, or other method; and

(ii) is located—

(I) within 2.5 miles of another branch of the acquiring institution; or

(II) within a neighborhood currently being served by another branch of the acquiring institution,

if such other branch of the acquiring institution is expected to continue to provide banking services to substantially all of the customers currently served by the branch acquired;

(C) a branch which is closing and reopening at a location which is—

(i) within 2.5 miles of the location of the branch being closed; or

(ii) within the same neighborhood as the branch being closed,

if the branch at the new location is expected to continue to provide banking services to substantially all of the customers served by the branch at the former location;

(D) a branch that is closed in connection with—

(i) an emergency acquisition under—

(I) section 11(n); or

(II) subsections (f) or (k) of section 13; or

(ii) any assistance provided by the Corporation under section 13(c); and

(E) any other branch closure whose exemption from the notice requirements of this section would not produce a result inconsistent with the purposes of this section.

(2) REGULATIONS.—The appropriate Federal banking agency shall, by regulation, determine the circumstances under which any exemption under paragraph(1)(E) may be granted.

* * * * * * *

SEC. 45. LENDER, FIDUCIARY, AND GOVERNMENT AGENCY ENVIRONMENTAL LIABILITIES.

(a) LENDER ENVIRONMENTAL LIABILITY.—

(1) IN GENERAL.—Notwithstanding any other provision or rule of Federal law, no lender, acting as defined in this section, shall be liable pursuant to a Federal environmental law, except as provided in this section.

(2) ACTUAL PARTICIPATION REQUIRED.—A lender shall only be liable pursuant to a Federal environmental law when the lender actually participates in management of another person's activities which create liability under the same Federal environmental law.

(3) DEFINITIONS.—The following definitions shall apply for purposes of this section:

(A) PARTICIPATE IN MANAGEMENT.—The term "participate in management" means actually participating in the management or operational affairs of other persons' activities, and does not include merely having the capacity to influence, or the unexercised right to control such activities;

(B) PARTICIPATE IN MANAGEMENT.—A person shall be considered to "participate in management" while a borrower is still in possession of property, only if such person—

(i) exercises decisionmaking control over the environmental compliance of a borrower, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices of the borrower; or

(ii) exercises control at a level comparable to that of a manager of the enterprise of the borrower, such that the person has assumed or manifested responsibility for the overall management of the enterprise encompassing day-to-day decisionmaking with respect to environmental compliance, or with respect to substantially all of the operational aspects (as distinguished from financial or administrative aspects) of the enterprise, other than environmental compliance.

(C) PARTICIPATE IN MANAGEMENT.—The term "participate in management" does not include engaging in an act or failing to act before the time that an extension of credit is made or a security interest is created in property.

(D) PARTICIPATE IN MANAGEMENT.—The term "participate in management" does not include, unless such actions rise to the level of participating in management (as defined in subparagraphs (A) and (B))—

(i) holding an extension of credit or a security interest or abandoning or releasing an extension of credit or a security interest;

(ii) including in the terms of an extension of credit, or in a contract or security agreement relating to such an extension, covenants, warranties, or other terms and conditions that relate to environmental compliance;

(iii) monitoring or enforcing the terms and conditions of an extension of credit or security interest;

(iv) monitoring or undertaking 1 or more inspections of property, except that monitoring or undertaking any such inspection, although not required by this sub-

section, shall provide probative evidence that a holder of a security interest is acting to preserve and protect the property during the time the holder may have possession or control of such property;

(v) requiring or conducting a response action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with property prior to, during, or upon the expiration of the term of an extension of credit;

(vi) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the property;

(vii) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of an extension of credit or security interest, or exercising forbearance; or

(viii) exercising other remedies that may be available under applicable law for the breach of any term or condition of the extension of credit or security agreement.

(E) When a lender did not participate in management of property prior to foreclosure, then the lender shall not be liable even if such person forecloses on property, sells, releases, or liquidates property, maintains business activities, winds up operations, or undertakes any response action with respect to property, or takes other measures to preserve, protect, or prepare property prior to sale or disposition, if such person seeks to sell, release, or otherwise divest the property at the earliest practical, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

(4) LIMITATION ON LIABILITY.—The liability of any lender that is liable under any Federal environmental law shall be limited to only the cost of any response action or corrective action to the extent and in the amount that the lender actively and directly contributed to the hazardous substance release. A lender shall not be liable for the cost of any response action or corrective action relating to the release of a hazardous substance which commences before and continues after the lender obtains a security interest in the property so long as the lender does not actively and directly contribute to the hazardous substance release.

(b) FIDUCIARY ENVIRONMENTAL LIABILITY.—

(1) IN GENERAL.—Notwithstanding any other provision or rule of Federal law, no fiduciary, acting as defined in this section, shall be liable pursuant to any Federal environmental law, except as provided in this section.

(2) LIABILITY OF FIDUCIARY.—

(A) Subject to subparagraphs (B) and (C), a fiduciary holding title to property or otherwise affiliated with property solely in a fiduciary capacity shall be personally subject to the obligations and liabilities of any person under any Federal environmental law, to the same extent as if the property were held by the fiduciary free of trust.

(B) The personal obligations and liabilities of a fiduciary referred to in subparagraph (A) shall be limited to the ex-

tent to which the assets of the trust or estate are sufficient to indemnify the fiduciary, unless—

(i) the obligations and liabilities would have arisen even if the person had not served as a fiduciary;

(ii) the fiduciary's own failure to exercise due care with respect to property caused or contributed to the release of hazardous substances following establishment of the trust, estate, or fiduciary relationship; or

(iii) the fiduciary had a role in establishing the trust, estate, or fiduciary relationship, and such trust, estate, or fiduciary relationship has no objectively reasonable or substantial purpose apart from the avoidance or limitation of liability under an environmental law.

Nothing in the preceding sentence shall be construed as requiring indemnification by an employee benefit plan (within the meaning of paragraph (3) of section 3 of Employee Retirement Income Security Act of 1974), or by any trust forming a part thereof, of any fiduciary of such plan contrary to the terms of the plan or in an amount in excess of the amount permitted under the terms of such plan.

(C) A fiduciary shall not be personally liable for undertaking or directing another to undertake a response action.

(3) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as affecting the liability, if any, of any person who—

(A)(i) acts in a capacity other than a fiduciary capacity; and

(ii) directly or indirectly benefits from a trust or fiduciary relationship; or

(B)(i) is a beneficiary and a fiduciary with respect to the same fiduciary estate; and

(ii) as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable laws.

(c) DEFINITIONS.—For purposes of subsections (a) and (b), the following definitions shall apply:

(1) FEDERAL ENVIRONMENTAL LAW.—The term "Federal environmental law" means any Federal statute or rule of common law with the purpose of protection of the environment and any Federal regulation promulgated thereunder and any State statute or regulation created as a federally approved or delegated program implementing these laws, including the following:

(A) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(B) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(C) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(D) The Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.).

(E) The Clean Air Act (42 U.S.C. 7401 et seq.).

(F) The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(G) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(H) The Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.).

(2) EXTENSION OF CREDIT.—The term "extension of credit" means the making or renewal of any loan, a granting of a line of credit or extending credit in any manner, such as an advance by means of an overdraft or the issuance of a standby letter of credit, and a lease finance transaction—

(A) in which the lessor does not initially select the leased property and does not, during the lease term, control the daily operation or maintenance of the property; or

(B) that conforms with regulations issued by the appropriate Federal banking agency or the appropriate State bank supervisory (as these terms are defined in section 3 of the Federal Deposit Insurance Act or with regulations issued by the National Credit Union Administration Board, as appropriate.

(3) FIDUCIARY.—The term "fiduciary" means a person who acts for the exclusive benefit of another person as a bona fide fiduciary within the meaning of section 3(21) of the Employee Retirement Income Security Act of 1974, trustee, executor, administrator, custodian, guardian, conservator, receiver, committee of estates of lunatics or other disabled persons, or personal representative; except, that the term "fiduciary" does not include any person—

(A) who owns, or controls, is affiliated with, or takes any action with respect to property on behalf of or for the benefit of a lender or takes any action to protect a lender's extension of credit or security interest (any such person shall be treated as a lender under subsection (a) of this section); or

(B) who is acting as a fiduciary with respect to a trust or other fiduciary estate that—

(i) was not created as part of, or to facilitate, one or more estate plans or pursuant to the incapacity of a natural person; and

(ii) was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit.

(4) FINANCIAL OR ADMINISTRATIVE ASPECT.—The term "financial or administrative aspect" means a function such as a credit manager, accounts payable officer, accounts receivable officer, personnel manager, comptroller, or chief financial officer, or any similar function.

(5) FORECLOSURE, FORECLOSE.—The terms "foreclosure" and "foreclose" means, respectively, acquiring, and to acquire, property through—

(A) purchase at sale under a judgment or decree, a power of sale, a nonjudicial foreclosure sale, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if such property was security for an extension of credit previously contracted;

(B) conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

(C) any other formal or informal manner by which the person acquires, for subsequent disposition, possession of collateral in order to protect the security interest of the person.

(6) HAZARDOUS SUBSTANCE.—The term "hazardous substance" means any chemical, biological, organic, inorganic, or radioactive pollutants, contaminants, materials, waste, or other substances regulated under, defined, listed, or included in any Federal environmental law.

(7) LENDER.—The term "lender" means—

(A) a person that makes a bona fide extension of credit to or takes a security interest from another person and includes a successor or assign of the person which makes the extension of credit or takes the security interest;

(B) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or other entity that in a bona fide manner is engaged in the business of buying or selling loans on interests therein;

(C) any person engaged in the business of insuring or guaranteeing against a default in the repayment of an extension of credit, or acting as a surety with respect to an extension of credit, to other persons; or

(D) any person regularly engaged in the business of providing title insurance who acquires property as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(8) OPERATIONAL ASPECT.—The term "operational aspect" means a function such as a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(9) PERSON.—The term "person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.

(10) PROPERTY.—The term "property" means real, personal, and mixed property.

(11) RESPONSE ACTION.—The term "response action" shall have the same meaning as that term is defined in section 101 of the Comprehensive Environmental Response, Compensation and Liability Act.

(12) SECURITY INTEREST.—The term "security interest" means a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease, or any other right accruing to a person to secure the repayment of money, the performance of a duty, or some other obligation.

(d) SAVINGS CLAUSE.—Nothing in subsections (a) (b), or (c), shall—

(1) affect the rights or immunities or other defenses that are already available to lenders or fiduciaries under any Federal environmental law;

(2) be construed to create any liability for any lender or fiduciary; or

(3) create a private right of action against any lender or fiduciary.

(e) FEDERAL BANKING AND LENDING AGENCY ENVIRONMENTAL LIABILITY.—

(1) GOVERNMENTAL ENTITIES.—

(A) BANKING AND LENDING AGENCIES.—Except as provided in paragraph (C), a Federal banking or lending agency shall not be liable under any law imposing strict liability for the release or threatened release of petroleum or a hazardous substance at or from property (including any right or interest therein) acquired—

(i) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including any of its subsidiaries, and bridge bank;

(ii) in connection with the provision of loans, discounts, advances, guarantees, insurance, or other financial assistance; or

(iii) in connection with property received in any civil or criminal proceeding, or administrative enforcement action, whether by settlement or order.

(B) APPLICATION OF STATE LAW.—Nothing in paragraph (e) shall be construed as preempting, affecting, applying to, or modifying any State law, or any rights, actions, cause of action, or obligations under State law, except that liability under State law shall not exceed the value of the agency's interest in the asset giving rise to such liability. Nothing in this section shall be construed to prevent a Federal banking or lending agency from agreeing with a State to transfer property to such State in lieu of any liability that might otherwise be imposed under State law.

(C) LIMITATION.—Notwithstanding paragraph (A), and subject to section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a Federal banking or lending agency that directly caused or materially contributed to the release of petroleum or a hazardous substance may be liable for removal, remedial, or other response action pertaining to that release.

(D) SUBSEQUENT PURCHASER.—The immunity provided by paragraphs (A) and (B) shall extend to the first subsequent purchaser of property described in such paragraph from a Federal banking or lending agency, unless such purchaser—

(i) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, or other response action due to a prior relationship with the property;

(ii) is or was affiliated with or related to a party described in subparagraph (i);

(iii) fails to agree to take reasonable steps necessary to abate the release or threatened release or to protect

public health and safety in a manner consistent with the purposes of applicable Federal environmental laws; or

(iv) directly causes or significantly and materially contributes to any additional release or threatened release on the property.

(E) FEDERAL OR STATE ACTION.—Notwithstanding subparagraph (D), if a Federal agency or State environmental agency is required to take remedial action due to the failure of a subsequent purchaser to carry out, in good faith, the agreement described in subparagraph (D)(iii), such subsequent purchaser shall reimburse the Federal or State environmental agency for the costs of such remedial action. Any such reimbursement shall not exceed the increase in the fair market value of the property attributable to the remedial action.

(2) LIEN EXEMPTION.—Notwithstanding any other provision of law, any property held by a subsequent purchaser referred to in paragraph (1)(D) or held by a Federal banking or lending agency shall not be subject to any lien for costs or damages associated with the release or threatened release of petroleum or a hazardous substance existing at the time of the transfer.

(3) EXEMPTION FROM COVENANTS TO REMEDIATE.—A Federal banking or lending agency shall be exempt from any law requiring such agency to grant covenants warranting that a removal, remedial, or other response action has been, or will in the future be, taken with respect to property acquired in the manner described in paragraph (e)(1)(A).

(4) DEFINITIONS.—For purposes of subsection (e), the following definitions shall apply:

(A) FEDERAL BANKING OR LENDING AGENCY.—The term "Federal banking or lending agency" means the Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, a Federal Reserve Bank, a Federal Home Loan Bank, the Department of Housing and Urban Development, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, the Small Business Administration, and any other Federal agency acting in a similar capacity, in any of their capacities, and their agents or appointees.

(B) HAZARDOUS SUBSTANCE.—The term "hazardous substance" has the same meaning as in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(C) RELEASE.—The term "release" has the same meaning as in section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and includes the use, storage, disposal, treatment, generation, or transportation of a hazardous substance.

(5) SAVINGS CLAUSE.—Nothing in subsection (e) shall—

(A) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any party, subject to the provisions of this section;

(B) be construed to create any liability for any party; or

(C) create a private right of action against an insured depository institution or lender or against a Federal banking or lending agency.

TRUTH IN SAVINGS ACT

Subtitle F—Truth in Savings

SEC. 261. SHORT TITLE.

This subtitle may be cited as the "Truth in Savings Act".

[SEC. 262. FINDINGS AND PURPOSE.

[(a) FINDINGS.—The Congress hereby finds that economic stability would be enhanced, competition between depository institutions would be improved, and the ability of the consumer to make informed decisions regarding deposit accounts, and to verify accounts, would be strengthened if there was uniformity in the disclosure of terms and conditions on which interest is paid and fees are assessed in connection with such accounts.

[(b) PURPOSE.—It is the purpose of this subtitle to require the clear and uniform disclosure of—

[(1) the rates of interest which are payable on deposit accounts by depository institutions; and

[(2) the fees that are assessable against deposit accounts,

so that consumers can make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts.

[SEC. 263. DISCLOSURE OF INTEREST RATES AND TERMS OF ACCOUNTS.

[(a) IN GENERAL.—Except as provided in subsections (b) and (c), each advertisement, announcement, or solicitation initiated by any depository institution or deposit broker relating to any demand or interest-bearing account offered by an insured depository institution which includes any reference to a specific rate of interest payable on amounts deposited in such account, or to a specific yield or rate of earnings on amounts so deposited, shall state the following information, to the extent applicable, in a clear and conspicuous manner:

[(1) The annual percentage yield.

[(2) The period during which such annual percentage yield is in effect.

[(3) All minimum account balance and time requirements which must be met in order to earn the advertised yield (and, in the case of accounts for which more than 1 yield is stated, each annual percentage yield and the account minimum balance requirement associated with each such yield shall be in close proximity and have equal prominence).

[(4) The minimum amount of the initial deposit which is required to open the account in order to obtain the yield adver-

tised, if such minimum amount is greater than the minimum balance necessary to earn the advertised yield.

[(5) A statement that regular fees or other conditions could reduce the yield.

[(6) A statement that an interest penalty is required for early withdrawal.

[(b) BROADCAST AND ELECTRONIC MEDIA AND OUTDOOR ADVERTISING EXCEPTION.—The Board may, by regulation, exempt advertisements, announcements, or solicitations made by any broadcast or electronic medium or outdoor advertising display not on the premises of the depository institution from any disclosure requirements described in paragraph (4) or (5) of subsection (a) if the Board finds that any such disclosure would be unnecessarily burdensome.

[(c) DISCLOSURE REQUIRED FOR ON-PREMISES DISPLAYS.—

[(1) IN GENERAL.—The disclosure requirements contained in this section shall not apply to any sign (including a rate board) disclosing a rate or rates of interest which is displayed on the premises of the depository institution if such sign contains—

[(A) the accompanying annual percentage yield; and

[(B) a statement that the consumer should request further information from an employee of the depository institution concerning the fees and terms applicable to the advertised account.

[(2) DEFINITION.—For purposes of paragraph (1), a sign shall only be considered to be displayed on the premises of a depository institution if the sign is designed to be viewed only from the interior of the premises of the depository institution.

[(d) MISLEADING DESCRIPTIONS OF FREE OR NO-COST ACCOUNTS PROHIBITED.—No advertisement, announcement, or solicitation made by any depository institution or deposit broker may refer to or describe an account as a free or no-cost account (or words of similar meaning) if—

[(1) in order to avoid fees or service charges for any period—

[(A) a minimum balance must be maintained in the account during such period; or

[(B) the number of transactions during such period may not exceed a maximum number; or

[(2) any regular service or transaction fee is imposed.

[(e) MISLEADING OR INACCURATE ADVERTISEMENTS, ETC., PROHIBITED.—No depository institution or deposit broker shall make any advertisement, announcement, or solicitation relating to a deposit account that is inaccurate or misleading or that misrepresents its deposit contracts.

[SEC. 264. ACCOUNT SCHEDULE.

[(a) IN GENERAL.—Each depository institution shall maintain a schedule of fees, charges, interest rates, and terms and conditions applicable to each class of accounts offered by the depository institution, in accordance with the requirements of this section and regulations which the Board shall prescribe. The Board shall specify, in regulations, which fees, charges, penalties, terms, conditions, and account restrictions must be included in a schedule required under this subsection. A depository institution need not include in such schedule any information not specified in such regulation.

[(b) INFORMATION ON FEES AND CHARGES.—The schedule required under subsection (a) with respect to any account shall contain the following information:

[(1) A description of all fees, periodic service charges, and penalties which may be charged or assessed against the account (or against the account holder in connection with such account), the amount of any such fees, charge, or penalty (or the method by which such amount will be calculated), and the conditions under which any such amount will be assessed.

[(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each such minimum balance is calculated.

[(3) Any minimum amount required with respect to the initial deposit in order to open the account.

[(c) INFORMATION ON INTEREST RATES.—The schedule required under subsection (a) with respect to any account shall include the following information:

[(1) Any annual percentage yield.

[(2) The period during which any such annual percentage yield will be in effect.

[(3) Any annual rate of simple interest.

[(4) The frequency with which interest will be compounded and credited.

[(5) A clear description of the method used to determine the balance on which interest is paid.

[(6) The information described in paragraphs (1) through (4) with respect to any period after the end of the period referred to in paragraph (2) (or the method for computing any information described in any such paragraph), if applicable.

[(7) Any minimum balance which must be maintained to earn the rates and obtain the yields disclosed pursuant to this subsection and a clear description of how any such minimum balance is calculated.

[(8) A clear description of any minimum time requirement which must be met in order to obtain the yields disclosed pursuant to this subsection and any information described in paragraph (1), (2), (3), or (4) that will apply if any time requirement is not met.

[(9) A statement, if applicable, that any interest which has accrued but has not been credited to an account at the time of a withdrawal from the account will not be paid by the depository institution or credited to the account by reason of such withdrawal.

[(10) Any provision or requirement relating to nonpayment of interest, including any charge or penalty for early withdrawal, and the conditions under which any such charge or penalty may be assessed.

[(d) OTHER INFORMATION.—The schedule required under subsection (a) shall include such other disclosures as the Board may determine to be necessary to allow consumers to understand and compare accounts, including frequency of interest rate adjustments, account restrictions, and renewal policies for time accounts.

[(e) STYLE AND FORMAT.—Schedules required under subsection (a) shall be written in clear and plain language and be presented

in a format designed to allow consumers to readily understand the terms of the accounts offered.

[SEC. 265. DISCLOSURE REQUIREMENTS FOR CERTAIN ACCOUNTS.

[The Board shall require, in regulations which the Board shall prescribe, such modification in the disclosure requirements under this Act relating to annual percentage yield as may be necessary to carry out the purposes of this Act in the case of—

[(1) accounts with respect to which determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a period of less than 1 year;

[(2) variable rate accounts;

[(3) accounts which, pursuant to law, do not guarantee payment of a stated rate;

[(4) multiple rate accounts; and

[(5) accounts with respect to which determination of annual percentage yield is based on an annual rate of interest that is guaranteed for a stated term.

[SEC. 266. DISTRIBUTION OF SCHEDULES.

[(a) IN GENERAL.—A schedule required under section 264 for an appropriate account shall be—

[(1) made available to any person upon request;

[(2) provided to any potential customer before an account is opened or a service is rendered; and

[(3) provided to the depositor, in the case of any time deposit which is renewable at maturity without notice from the depositor, at least 30 days before the date of maturity.

[(b) DISTRIBUTION IN CASE OF CERTAIN INITIAL DEPOSITS.—If—

[(1) a depositor is not physically present at an office of a depository institution at the time an initial deposit is accepted with respect to an account established by or for such person; and

[(2) the schedule required under section 264(a) has not been furnished previously to such depositor,

the depository institution shall mail the schedule to the depositor at the address shown on the records of the depository institution for such account no later than 10 days after the date of the initial deposit.

[(c) DISTRIBUTION OF NOTICE OF CERTAIN CHANGES.—If—

[(1) any change is made in any term or condition which is required to be disclosed in the schedule required under section 264(a) with respect to any account; and

[(2) the change may reduce the yield or adversely affect any holder of the account,

all account holders who may be affected by such change shall be notified and provided with a description of the change by mail at least 30 days before the change takes effect.

[(d) DISTRIBUTION IN CASE OF ACCOUNTS ESTABLISHED BY MORE THAN 1 INDIVIDUAL OR BY A GROUP.—If an account is established by more than 1 individual or for a person other than an individual, any distribution described in this section with respect to such account meets the requirements of this section if the distribution is made to 1 of the individuals who established the account or 1 indi-

vidual representative of the person on whose behalf such account was established.

[(e) NOTICE TO ACCOUNT HOLDERS AS OF THE EFFECTIVE DATE OF REGULATIONS.—For any account for which the depository institution delivers an account statement on a quarterly or more frequent basis, the depository institution shall include on or with any regularly scheduled mailing posted or delivered within 180 days after publication of regulations issued by the Board in final form, a statement that the account holder has the right to request an account schedule containing the terms, charges, and interest rates of the account, and that the account holder may wish to request such an account schedule.]

SEC. 262. PURPOSE.

It is the purpose of this subtitle to ensure that consumers can make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts by requiring that institutions offering interest-bearing accounts pay interest on the full amount of principal each day in a consumer deposit account at the rate agreed to be paid by the institution.

SEC. 263. PROHIBITION ON MISLEADING OR INACCURATE ADVERTISEMENTS AND DISCLOSURES.

No depository institution or deposit broker shall make any advertisement, announcement, solicitation or disclosure relating to a deposit account that is inaccurate or misleading, including any inaccurate or misleading description of a free or no-cost account, or that misrepresents its deposit contracts.

SEC. 264. ACCOUNT INFORMATION.

(a) IN GENERAL.—Each depository institution shall disclose fees, charges, penalties, and interest rates applicable to each class of accounts offered by the institution in accordance with this section.

(b) INFORMATION ON FEES AND CHARGES.—Each depository institution shall disclose the following information with respect to any account to a consumer at the time the account is opened, or at such earlier time as a consumer may request (and no additional information may be required to be disclosed under this subtitle by regulation or otherwise with respect to such account):

(1) A description of all fees, periodic service charges, penalties, and interest rates which may be charged or assessed against the account (or against the account holder in connection with such account), the amount of any such fees, charges, or penalties (or the method by which such amount will be calculated), and the conditions under which any such amount will be assessed.

(2) All minimum balance requirements that affect fees, charges, and penalties, including a clear description of how each such minimum balance is calculated.

(3) Any minimum amount required with respect to the initial deposit in order to open the account.

(c) INFORMATION ON INTEREST RATES.—The disclosures required under subsections (a) and (b) with respect to any account shall include the following information:

(1) Any annual rate of simple interest.

(2) The frequency with which interest will be compounded and credited.

(d) NO REGULATIONS AUTHORIZED.—No regulations may be prescribed with respect to this section by the Board or any agency referred to in this title, including any regulation to define any terms used in this section.

SEC. 265. DISCLOSURE OF CHANGE IN TERMS.

If any change is made in any item required to be disclosed under section 264, all account holders who may be affected by such change shall be notified by mail and provided with a description of such change at least 30 days before the effective date of the change.

SEC. [267.] *266.* PAYMENT OF INTEREST.

(a) CALCULATED ON FULL AMOUNT OF PRINCIPAL.—Interest on an interest-bearing account at any depository institution shall be calculated by such institution on the full amount of principal in the account for each day of the stated calculation period at the rate or rates of interest disclosed pursuant to this Act.

(b) NO PARTICULAR METHOD OF COMPOUNDING INTEREST REQUIRED.—Subsection (a) shall not be construed as prohibiting or requiring the use of any particular method of compounding or crediting of interest.

(c) DATE BY WHICH INTEREST MUST ACCRUE.—Interest on accounts that are subject to this Act shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act, subject to subsections (b) and (c) of such section.

[SEC. 268. PERIODIC STATEMENTS.

[Each depository institution shall include on or with each periodic statement provided to each account holder at such institution a clear and conspicuous disclosure of the following information with respect to such account:

[(1) The annual percentage yield earned.

[(2) The amount of interest earned.

[(3) The amount of any fees or charges imposed.

[(4) The number of days in the reporting period.

[SEC. 269. REGULATIONS.

[(a) IN GENERAL.—

[(1) REGULATIONS REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Board, after consultation with each agency referred to in section 270(a) and public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this Act.

[(2) EFFECTIVE DATE OF REGULATIONS.—The regulations prescribed under paragraph (1) shall take effect not later than 9 months after publication in final form.

[(3) CONTENTS OF REGULATIONS.—The regulations prescribed under paragraph (1) may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of accounts as, in the judgment of the Board, are necessary or proper to carry out the purposes of this Act, to prevent circumvention or evasion of the

requirements of this Act, or to facilitate compliance with the requirements of this Act.

[(4) DATE OF APPLICABILITY.—The provisions of this Act shall not apply with respect to any depository institution before the effective date of regulations prescribed by the Board under this subsection (or by the National Credit Union Administration Board under section 12(b), in the case of any depository institution described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act).

[(b) MODEL FORMS AND CLAUSES.—

[(1) IN GENERAL.—The Board shall publish model forms and clauses for common disclosures to facilitate compliance with this Act. In devising such forms, the Board shall consider the use by depository institutions of data processing or similar automated machines.

[(2) USE OF FORMS AND CLAUSES DEEMED IN COMPLIANCE.—Nothing in this Act may be construed to require a depository institution to use any such model form or clause prescribed by the Board under this subsection. A depository institution shall be deemed to be in compliance with the disclosure provisions of this Act if the depository institution—

[(A) uses any appropriate model form or clause as published by the Board; or

[(B) uses any such model form or clause and changes it by—

[(i) deleting any information which is not required by this Act; or

[(ii) rearranging the format,

if in making such deletion or rearranging the format, the depository institution does not affect the substance, clarity, or meaningful sequence of the disclosure.

[(3) PUBLIC NOTICE AND OPPORTUNITY FOR COMMENT.—Model disclosure forms and clauses shall be adopted by the Board after duly given notice in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.]

SEC. 267. REGULATIONS.

(a) IN GENERAL.—The Board, after consultation with each agency referred to in section 265(a) and public notice and opportunity for comment, shall prescribe regulations to carry out the purpose and provisions of this subtitle.

(b) EFFECTIVE DATE OF REGULATIONS.—The provisions of this subtitle shall not apply with respect to any depository institution before the effective date of regulations prescribed by the Board under this subsection.

SEC. [270.] *268.* ADMINISTRATIVE ENFORCEMENT.

(a) IN GENERAL.—Compliance with the requirements imposed under this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act—

(A) by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) in the case of insured depository institutions (as defined in section 3(c)(2) of such Act);

(B) by the Federal Deposit Insurance Corporation in the case of depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

(C) by the Director of the Office of Thrift Supervision in the case of depository institutions described in clause (v) and or (vi) of section 19(b)(1)(A) of the Federal Reserve Act which are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

(2) the Federal Credit Union Act, by the National Credit Union Administration Board in the case of depository institutions described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act.

(b) ADDITIONAL ENFORCEMENT POWERS.—

(1) VIOLATION OF THIS ACT TREATED AS VIOLATION OF OTHER ACTS.—For purposes of the exercise by any agency referred to in subsection (a) of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under that Act.

(2) ENFORCEMENT AUTHORITY UNDER OTHER ACTS.—In addition to the powers of any agency referred to in subsection (a) under any provision of law specifically referred to in such subsection, each such agency may exercise, for purposes of enforcing compliance with any requirement imposed under this Act, any other authority conferred on such agency by law.

(c) REGULATIONS BY AGENCIES OTHER THAN THE BOARD.—The authority of the Board to issue regulations under this Act does not impair the authority of any other agency referred to in subsection (a) to make rules regarding its own procedures in enforcing compliance with the requirements imposed under this Act.

[SEC. 271. CIVIL LIABILITY.

[(a) CIVIL LIABILITY.—Except as otherwise provided in this section, any depository institution which fails to comply with any requirement imposed under this Act or any regulation prescribed under this Act with respect to any person who is an account holder is liable to such person in an amount equal to the sum of—

[(1) any actual damage sustained by such person as a result of the failure;

[(2)(A) in the case of an individual action, such additional amount as the court may allow, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

[(B) in the case of a class action, such amount as the court may allow, except that—

[(i) as to each member of the class, no minimum recovery shall be applicable; and

[(ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same depository institution shall not be more than the lesser of $500,000 or 1 percent of the net worth of the depository institution involved; and

[(3) in the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with a reasonable attorney's fee as determined by the court.

[(b) CLASS ACTION AWARDS.—In determining the amount of any award in any class action, the court shall consider, among other relevant factors—

[(1) the amount of any actual damages awarded;

[(2) the frequency and persistence of failures of compliance;

[(3) the resources of the depository institution;

[(4) the number of persons adversely affected; and

[(5) the extent to which the failure of compliance was intentional.

[(c) BONA FIDE ERRORS.—

[(1) GENERAL RULE.—A depository institution may not be held liable in any action brought under this section for a violation of this Act if the depository institution demonstrates by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

[(2) EXAMPLES.—Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of legal judgment with respect to a depository institution's obligation under this Act is not a bona fide error.

[(d) NO LIABILITY FOR OVERPAYMENT.—A depository institution may not be held liable in any action under this section for a violation of this Act if the violation has resulted in—

[(1) an interest payment to the account holder in an amount greater than the amount determined under any disclosed rate of interest applicable with respect to such payment; or

[(2) a charge to the consumer in an amount less than the amount determined under the disclosed charge or fee schedule applicable with respect to such charge.

[(e) JURISDICTION.—Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within 1 year after the date of the occurrence of the violation involved.

[(f) RELIANCE ON BOARD RULINGS.—No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any regulation or order, or any interpretation of any regulation or order, of the Board, or in conformity with any interpretation or approval by an official or employee of the Board duly authorized by the Board to issue such interpretation or approval under procedures prescribed by the Board, notwithstanding, the fact that after such act or omission has occurred, such regulation, order, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

[(g) NOTIFICATION OF AND ADJUSTMENT FOR ERRORS.—A depository institution shall not be liable under this section or section 270 for any failure to comply with any requirement imposed under this Act with respect to any account if—

[(1) before—

[(A) the end of the 60-day period beginning on the date on which the depository institution discovered the failure to comply;

[(B) any action is instituted against the depository institution by the account holder under this section with respect to such failure to comply; and

[(C) any written notice of such failure to comply is received by the depository institution from the account holder,

the depository institution notifies the account holder of the failure of such institution to comply with such requirement; and

[(2) the depository institution makes such adjustments as may be necessary with respect to such account to ensure that—

[(A) the account holder will not be liable for any amount in excess of the amount actually disclosed with respect to any fee or charge;

[(B) the account holder will not be liable for any fee or charge imposed under any condition not actually disclosed; and

[(C) interest on amounts in such account will accrue at the annual percentage yield, and under the conditions, actually disclosed (and credit will be provided for interest already accrued at a different annual percentage yield and under different conditions than the yield or conditions disclosed).

[(h) MULTIPLE INTERESTS IN 1 ACCOUNT.—If more than 1 person holds an interest in any account—

[(1) the minimum and maximum amounts of liability under subsection (a)(2)(A) for any failure to comply with the requirements of this Act shall apply with respect to such account; and

[(2) the court shall determine the manner in which the amount of any such liability with respect to such account shall be distributed among such persons.

[(i) CONTINUING FAILURE TO DISCLOSE.—

[(1) CERTAIN CONTINUING FAILURES TREATED AS 1 VIOLATION.—Except as provided in paragraph (2), the continuing failure of any depository institution to disclose any particular term required to be disclosed under this Act with respect to a particular account shall be treated as a single violation for purposes of determining the amount of any liability of such institution under subsection (a) for such failure to disclose.

[(2) SUBSEQUENT FAILURE TO DISCLOSE.—The continuing failure of any depository institution to disclose any particular term required to be disclosed under this Act with respect to a particular account after judgment has been rendered in favor of the account holder in connection with a prior failure to disclose such term with respect to such account shall be treated as a subsequent violation for purposes of determining liability under subsection (a).

[(3) COORDINATION WITH SECTION 270.—This subsection shall not limit or otherwise affect the enforcement power under section 270 of any agency referred to in subsection (a) of such section.]

SEC. [272.] *269.* CREDIT UNIONS.

(a) IN GENERAL.—No regulation prescribed by the Board under this Act shall apply directly with respect to any depository institution described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act.

(b) REGULATIONS PRESCRIBED BY THE NCUA.—Within 90 days of the effective date of any regulation prescribed by the Board under this Act, the National Credit Union Administration Board shall prescribe a regulation substantially similar to the regulation prescribed by the Board taking into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

[SEC. 273. EFFECT ON STATE LAW.

[The provisions of this Act do not supersede any provisions of the law of any State relating to the disclosure of yields payable or terms for accounts to the extent such State law requires the disclosure of such yields or terms for accounts, except to the extent that those laws are inconsistent with the provisions of this Act, and then only to the extent of the inconsistency. The Board may determine whether such inconsistencies exist.

[SEC. 274. DEFINITIONS.

[For the purposes of this Act—

[(1) ACCOUNT.—The term ''account'' means any account intended for use by and generally used by consumers primarily for personal, family, or household purposes that is offered by a depository institution into which a consumer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.

[(2) ANNUAL PERCENTAGE YIELD.—The term ''annual percentage yield'' means the total amount of interest that would be received on a $100 deposit, based on the annual rate of simple interest and the frequency of compounding for a 365-day period, expressed as a percentage calculated by a method which shall be prescribed by the Board in regulations.

[(3) ANNUAL RATE OF SIMPLE INTEREST.—The term ''annual rate of simple interest''—

[(A) means the annualized rate of interest paid with respect to each compounding period, expressed as a percentage; and

[(B) may be referred to as the ''annual percentage rate''.

[(4) BOARD.—The term ''Board'' means the Board of Governors of the Federal Reserve System.

[(5) DEPOSIT BROKER.—The term ''deposit broker''—

[(A) has the meaning given to such term in section 29(f)(1) of the Federal Deposit Insurance Act; and

[(B) includes any person who solicits any amount from any other person for deposit in an insured depository institution.

[(6) DEPOSITORY INSTITUTION.—The term ''depository institution'' has the meaning given such term in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act.

[(7) INTEREST.—The term "interest" includes dividends paid with respect to share draft accounts which are accounts within the meaning of paragraph (3).

[(8) MULTIPLE RATE ACCOUNT.—The term "multiple rate account" means any account that has 2 or more annual rates of simple interest which take effect at the same time or in succeeding periods and which are known at the time of disclosure.]

SEC. 270. DEFINITIONS.

For the purposes of this subtitle, the following definitions shall apply:

(1) ACCOUNTS.—The term "account" means any account intended for use by and generally used by a consumer primarily for personal, family, or household purposes that is offered by a depository institution.

(2) DEPOSIT BROKER.—The term "deposit broker"—

(A) has the meaning given to such term in section 29(f)(1) of the Federal Deposit Insurance Act; and

(B) includes any person who solicits any amount from any other person for deposit in an insured depository institution.

(3) DEPOSITORY INSTITUTION.—The term "depository institution"—

(A) means an institution described in clause (i), (ii), (iii), (iv), (v), or (vi) of section 19(b)(1)(A) of the Federal Reserve Act; and

(B) does not include nonautomated credit unions which were not required to comply with the requirements of this title as of the date of the enactment of the Financial Institutions Regulatory Relief Act of 1995 pursuant to the determination of the National Credit Union Administration Board.

(4) INTEREST.—The term "interest" includes dividends paid with respect to share accounts which are accounts within the meaning of paragraph (1).

(5) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

SECTION 903 OF THE ELECTRONIC FUND TRANSFER ACT

§ 903. [15 U.S.C. 1693a] Definitions

As used in this title—

(1) the term "accepted card or other means of access" means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services, *but such term does not include a card, device, or computer that a person may use to pay for transactions through use of value stored on, or assigned*

to, the card, device, or computer itself, except for those transactions where such card, device, or computer is actually used to access an account to effect such transaction;

(2) the term "account" means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 103(i) of this Act), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement *and does not include any value which is stored on, or assigned to, a card, device, or computer itself that enables a person to pay for transactions through use of that stored value*;

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EQUAL CREDIT OPPORTUNITY ACT

TITLE VII—EQUAL CREDIT OPPORTUNITY

Sec.
701. Prohibited discrimination.

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704A. Incentives for self-testing and self-correction.

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§ 701. Prohibited discrimination; reasons for adverse action

(a) * * *

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(d)(1) Within thirty days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

(A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

[(B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally, if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.**]**

(B) giving written notification of adverse action which discloses—

(i) the applicant's right to a statement of reasons within 30 days after receipt by the creditor of a request made within 60 days after such notification;

(ii) if credit is denied or the charge for such credit is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency—

(I) that fact and the name, address, and telephone number of the consumer reporting agency making the report;

(II) the consumer's right to obtain, under section 612, a free copy of a consumer report on the consumer, from the consumer reporting agency referred to in subclause (I) within the 30-day period provided under such section; and

(III) the consumer's right to dispute, under section 611, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

(iii) if credit is denied or the charge for credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living, that fact and the right to receive disclosure of the nature of the information so received, within a reasonable period of time, upon the consumer's written request for information within 60 days after learning of such adverse action; and

(iv) the identity of the person or office from which such notification may be obtained.

Such statement of reasons may be given orally if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

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(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken[.] *and, to the extent applicable, the name and address, and telephone number of the consumer reporting agency identified in accordance with the requirements of subsection (d)(3)(ii) and a statement of the right to obtain disclosure of the nature of the information upon which adverse action was taken as required by such subsection.*

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SEC. 704A. INCENTIVES FOR SELF-TESTING AND SELF-CORRECTION.

(a) IN GENERAL.—If a creditor—

(1) conducts, or authorizes an independent third party to conduct, a self-test of the creditor's lending or any part of the creditor's lending operations in order to determine the level or effectiveness of compliance with this title by the creditor; and

(2) has identified discriminatory practices and has taken or is taking appropriate corrective actions to address the discrimination,

any report or results of such a self-test may not be obtained or used by any applicant, department, or agency in any proceeding or civil action brought under this title.

(b) RESULTS OF SELF-TESTING.—No provision of this section shall be construed as preventing an applicant, department, or agency from obtaining and using the results of any self-testing in any proceeding or civil action brought under this title if—

(1) the creditor or any other entity conducted such activity at the request of a department or agency;

(2) the creditor or any other entity, or any person acting on behalf of the creditor or other entity—

(A) voluntarily releases or discloses all, or any part of, such results; or

(B) refers to or describes such results as a defense to charges of unlawful discrimination against such creditor, person, or entity; or

(3) the results are sought by the applicant, department, or agency by means of a discovery request for the purposes of determining an appropriate penalty or remedy for a violation of this title.

(c) REGULATIONS.—The appropriate Federal department or agency shall prescribe regulations, after notice and opportunity for comment, which determine what types of "self-tests" are sufficiently extensive so as to constitute a determination of the level or effectiveness of a creditor's compliance with this title.

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§ 706. Civil liability

(a) * * *

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[(g) The agencies] *(g) REFERRALS TO THE ATTORNEY GENERAL.—*

(1) IN GENERAL.—The agencies having responsibility for administrative enforcement under section 704, if unable to obtain compliance with section 701, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted. Each agency referred to in paragraphs (1), (2), and (3) of section 704(a) shall refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit in violation of section 701(a). Each such agency may refer the matter to the Attorney General whenever the agency has reason to believe that 1 or more creditors has violated section 701(a).

(2) LIMITATION ON REFERRALS OF SELF-TESTING RESULTS.—

(A) IN GENERAL.—No agency shall be required to refer any report or results of a self-test relating to any creditor to the Attorney General if the creditor—

(i) has already identified discriminatory practices as the result of self-testing instituted by the creditor to determine compliance with this title; and

(ii) has taken or is taking appropriate corrective actions to address the discrimination.

(3) ENFORCEMENT UNDER OTHER LAWS.—No provision of this section shall be construed as limiting the authority of the agency to enforce the provisions of this Act under any other provision of law.

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(k) NOTICE TO HUD OF VIOLATIONS.—Whenever an agency referred to in paragraph (1), (2), or (3) of section 704(a)—

(1) has reason to believe, as a result of receiving a consumer complaint, conducting a consumer compliance examination, or otherwise, that a violation of this title has occurred;

(2) has reason to believe that the alleged violation would be a violation of the Fair Housing Act; and

(3) does not refer the matter to the Attorney General pursuant to subsection (g),

the agency shall notify the Secretary of Housing and Urban Development of the violation, and shall notify the applicant that the Secretary of Housing and Urban Development has been notified of the alleged violation and that remedies for the violation may be available under the Fair Housing Act. *No such agency shall be required to notify the Secretary of Housing and Urban Development or the applicant that the agency has reason to believe that a violation of this title or the Fair Housing Act occurred if the reason is based on a result of self-testing instituted by the creditor to determine compliance with this title, and the creditor has already identified the possible violation and has taken or is taking appropriate corrective actions to address the possible violation. No provisions of this section shall be construed as limiting the authority of the agency to enforce the provisions of this title under any other provision of law.*

(l) REASONABLE PROCEDURES TO ASSURE COMPLIANCE.—No person shall be held liable for any violation of subsection 701(d) if such person shows by a preponderance of the evidence that at the time of the alleged violation the person maintained reasonable procedures to assure compliance with the provisions of the subsection.

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§ 709. Short title

This title may be cited as the "Equal Credit Opportunity Act".

SECTION 615 OF THE FAIR CREDIT REPORTING ACT

§ 615. Requirements on users of consumer reports

(a) Whenever [credit or] insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such [credit or] insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

[(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained

from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.]

[(c)] *(b)* No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of [subsections (a) and (b)] *subsection (a).*

FAIR HOUSING ACT

TITLE VIII—FAIR HOUSING

SHORT TITLE

SEC. 800. This title may be cited as the "Fair Housing Act".

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ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 814. (a) PATTERN OR PRACTICE CASES.—Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, or that any group of persons has been denied any of the rights granted by this title and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States district court. *Before bringing a civil action under the preceding sentence against any person or group of persons described in paragraph (1), (2), or (3) of section 704(a) of the Equal Credit Opportunity Act with respect to a violation of 805(a) of this title, the Attorney General shall consult with the appropriate agency under such paragraph.*

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SEC. 814A. SELF-TESTING ENHANCEMENT.

(a) IN GENERAL.—If any person—

(1) conducts, or authorizes an independent third party to conduct, a self-test of that person's residential real estate related lending activities, or any part of such activities, in order to determine the level or effectiveness of compliance with this title by the person; and

(2) has identified discriminatory practices and has taken or is taking appropriate corrective actions to address the discrimination,

any report or results of such a self-test may not be obtained or used by any aggrieved person, complainant, department, or agency in any proceeding or civil action brought under this title.

(b) RESULTS OF SELF-TESTING.—No provision of this section shall be construed as preventing an aggrieved person, complainant, department, or agency from obtaining and using the results of any self-testing as described in subsection (a) in any proceeding or civil action brought under this title if—

(1) the creditor or any other entity conducted such activity at the request of a department or agency;

(2) the creditor or any other entity, or any person acting on behalf of the creditor or other entity—

(A) voluntarily releases or discloses all, or any part of, such results; or

(B) refers to or describes such results as a defense to charges of unlawful discrimination against such creditor, person, or entity; or

(3) the results are sought by the aggrieved person, complainant, department, or agency by means of a discovery request for the purposes of determining an appropriate penalty or remedy for a violation of this title.

(c) REGULATIONS.—The appropriate Federal department or agency shall prescribe regulations, after notice and opportunity for comment, which determine what types of "self-tests" are sufficiently extensive so as to constitute a determination of the level or effectiveness of a creditor's compliance with this title.

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EQUAL CREDIT OPPORTUNITY ACT

TITLE VII—EQUAL CREDIT OPPORTUNITY

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§ 701. Prohibited discrimination; reasons for adverse action

(a) * * *

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(f) CREDIT SCORING SYSTEM.—

(1) IN GENERAL.—A creditor shall be deemed to be in compliance with subsection (a) with respect to any credit decision made by the creditor which is based solely on the use of an empirically derived, demonstrably and statistically sound, credit scoring system (as defined by the Board in regulations prescribed under this title) if such system—

(A) does not utilize any category protected under subsection (a);

(B) does not use as a factor in such system any criterion which is so directly associated with such a category as to be the functional equivalent of such a category; and

(C) does not use as a factor in such system any criterion that has a disparate impact on a category protected under subsection (a) unless use of the criterion is justified by busi-

ness necessity and there is no less discriminatory alternative available.

(2) AGE AS A FACTOR.—No provision of this subsection shall be construed as precluding a creditor from using age as a factor in a credit scoring system under paragraph (1) to the extent otherwise permitted under this title.

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§ 706. Civil liability

(a) * * *

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(h) When a matter is referred to the Attorney General pursuant to subsection (g), or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this title, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including actual and punitive damages and injunctive relief. *Before bringing a civil action against any creditor described in paragraph (1), (2), or (3) of section 704(a), the Attorney General shall consult with the appropriate agency under such paragraph.*

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CONSUMER CREDIT PROTECTION ACT

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TITLE I—CONSUMER CREDIT COST DISCLOSURE

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CHAPTER 5—CONSUMER LEASES

[§ 184. Consumer lease advertising

[(a) No advertisement to aid, promote, or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at inception of the lease unless the advertisement also states clearly and conspicuously and in accordance with regulations issued by the Board each of the following items of information which is applicable:

[(1) That the transaction advertised is a lease.

[(2) The amount of any payment required at the inception of the lease or that no such payment is required if that is the case.

[(3) The number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease.

[(4) That the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability.

[(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time.

[(b) RADIO ADVERTISEMENTS.—

[(1) IN GENERAL.—An advertisement by radio broadcast to aid, promote, or assist, directly or indirectly, any consumer lease shall be deemed to be in compliance with the requirements of subsection (a) if such advertisement clearly and conspicuously—

[(A) states the information required by paragraphs (1) and (2) of subsection (a);

[(B) states the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;

[(C) includes—

[(i) a referral to—

[(I) a toll-free telephone number established in accordance with paragraph (2) that may be used by consumers to obtain the information required under subsection (a); or

[(II) a written advertisement that—

[(aa) appears in a publication in general circulation in the community served by the radio station on which such advertisement is broadcast during the period beginning 3 days before any such broadcast and ending 10 days after such broadcast; and

[(bb) includes the information required to be disclosed under subsection (a); and

[(ii) the name and dates of any publication referred to in clause (i)(II); and

[(D) includes any other information which the Board determines necessary to carry out this chapter.

[(2) ESTABLISHMENT OF TOLL-FREE NUMBER.—

[(A) IN GENERAL.—In the case of a radio broadcast advertisement described in paragraph (1) that includes a referral to a toll-free telephone number, the lessor who offers the consumer lease shall—

[(i) establish such a toll-free telephone number not later than the date on which the advertisement including the referral is broadcast;

[(ii) maintain such telephone number for a period of not less than 10 days, beginning on the date of any such broadcast; and

[(iii) provide the information required under subsection (a) with respect to the lease to any person who calls such number.

[(B) FORM OF INFORMATION.—The information required to be provided under subparagraph (A)(iii) shall be provided verbally or, if requested by the consumer, in written form.

[(3) NO EFFECT ON OTHER LAW.—Nothing in this subsection shall affect the requirements of Federal law as such requirements apply to advertisement by any medium other than radio broadcast.

[(c) There is no liability under this section on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.]

SEC. 184. CONSUMER LEASE ADVERTISING.

(a) IN GENERAL.—If an advertisement for a consumer lease states the amount of any payment or states that any or no initial payment is required, the advertisement must also clearly and conspicuously state the following terms, as applicable:

(1) That the transaction advertised is a lease.

(2) The total of initial payments required at or before consummation of the lease or delivery of the property, whichever is later.

(3) That a security deposit is required.

(4) The number, amounts, and timing of scheduled payments.

(5) For a lease in which the consumer's liability at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

(b) ADVERTISING MEDIUM NOT LIABLE.—Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

§ 185. Civil liability

(a) Any lessor who fails to comply with any requirement imposed under section 182 or 183 of this chapter with respect to any person is liable to such person as provided in section 130. *Notwithstanding the preceding sentence, a creditor shall only have liability determined under section 130(a)(2) for failing to comply with the requirements of paragraph (2), (8), (9), or (10) of section 182 or for failing to comply with disclosure requirements under State law for any term which the Board has determined to be substantially the same in meaning under section 186 as any of the terms referred to in section 182.*

* * * * * * *

SEC. 187. REGULATIONS.

(a) REGULATIONS AUTHORIZED.—

(1) IN GENERAL.—The Board shall write regulations or staff commentary, if appropriate, to update and clarify the requirements and definitions for lease disclosures, contracts, and any other specific issues related to consumer leasing which would carry out the purposes of this chapter, to prevent any cir-

cumvention of the chapter, and to facilitate compliance with the requirements of the chapter.

(2) CLASSIFICATIONS, ADJUSTMENTS.—The regulations prescribed under paragraph (1) may contain classifications and differentiations and may provide for adjustments and exceptions for any class of transaction.

(b) MODEL DISCLOSURES.—The Board shall publish model disclosure forms and clauses to facilitate compliance with the disclosure requirements and to aid the consumer in understanding the transaction. In designing forms, the Board shall consider the use by lessors of data processing or similar automated equipment. Use of the models shall be optional. A lessor who properly uses the material aspects of the models shall be deemed to be in compliance with the disclosure requirements.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Any regulation of the Board, or any amendment or interpretation thereof, that requires a disclosure different from the disclosures previously required shall have an effective date of the October 1 that follows the date of promulgation by at least 6 months.

(2) LONGER PERIOD.—The Board may, in the Board's discretion, lengthen the period of time referred to in paragraph (1) to permit lessors to adjust their forms to accommodate new requirements.

(3) SHORTER PERIOD.—The Board may also shorten the period of time referred to in paragraph (1) if the Board makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive practices.

(4) COMPLIANCE BEFORE EFFECTIVE DATE.—Lessors may comply with any newly promulgated disclosure requirement before the effective date of such requirement.

BANK HOLDING COMPANY ACT OF 1956

DEFINITIONS

SEC. 2. (a) * * *

* * * * * * *

(g) For the purposes of this Act—

(1) shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company; *and*

(2) shares held or controlled directly or indirectly by trustees for the benefit of (A) a company, (B) the shareholders or members of a company, or (C) the employees (whether exclusively or not) of a company, shall be deemed to be controlled by such company**[**; and**]**.

[(3) shares transferred after January 1, 1966, by any bank holding company (or by any company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor

unless the Board, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.]

* * * * * * *

(o) OTHER DEFINITIONS.—For purposes of this Act, the following definitions shall apply:

[(1) ADEQUATELY CAPITALIZED.—The term "adequately capitalized" means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.]

(1) CAPITAL TERMS.—

(A) INSURED DEPOSITORY INSTITUTIONS.—With respect to insured depository institutions, the terms "well-capitalized", "adequately capitalized", and "uncapitalized" have the meaning given those terms in section 38(b) of the Federal Deposit Insurance Act.

(B) BANK HOLDING COMPANY.—

(i) ADEQUATELY CAPITALIZED.—The term "adequately capitalized" means a level of capitalization which meets or exceeds all applicable Federal regulatory capital standards.

(ii) WELL CAPITALIZED.—A bank holding company is "well capitalized" if it meets the required capital levels for well capitalized bank holding companies established by the Board.

(C) OTHER CAPITAL TERMS.—The terms "Tier 1" and "risk-weighted assets" have the meaning given those terms in the capital guidelines or regulations established by the Board for bank holding companies.

* * * * * * *

(8) LEAD INSURED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—The term "lead insured depository institution" means the largest insured depository institution controlled by the bank holding company at any time, based on a comparison of the average total risk-weighted assets controlled by each insured depository institution during the previous 12-month period.

(B) BRANCH OR AGENCY.—For purposes of this paragraph and section 4(j)(4), the term 'insured depository institution' shall also include any branch or agency operated in the United States by a foreign bank.

(9) WELL MANAGED.—The term "well managed" means—

(A) in the case of any company or depository institution which receives examinations, the achievement of—

(i) a CAMEL composite rating of 1 or 2 (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of such company or institution; and

(ii) at least a satisfactory rating for management, if such rating is given; or

(B) in the case of a company or depository institution that has not received an examination rating, the existence

and use of managerial resources which the Board determines are satisfactory.

* * * * * * *

ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) * * *

* * * * * * *

(h) NO APPROVAL REQUIRED FOR CERTAIN TRANSACTIONS.—

(1) IN GENERAL.—Notwithstanding paragraph (3) or (5) of subsection (a) and subject to paragraphs (5) and (6), an acquisition of shares by a registered bank holding company, or a merger or consolidation between registered bank holding companies, shall be deemed approved at the conclusion of the period specified in subparagraph (G) if all of the following conditions have been met:

(A) FINANCIAL AND MANAGERIAL CRITERIA.—

(i) WELL CAPITALIZED BANK HOLDING COMPANY.—Both at the time of and immediately after the proposed transaction, the acquiring bank holding company is well capitalized.

(ii) WELL CAPITALIZED LEAD INSURED DEPOSITORY INSTITUTION.—Both at the time of and immediately after the proposed transaction, the lead insured depository institution of the acquiring bank holding company is well capitalized.

(iii) CAPITAL OF OTHER INSURED DEPOSITORY INSTITUTIONS.—At the time of the transaction, well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by the acquiring bank holding company.

(iv) NO UNDERCAPITALIZED INSURED DEPOSITORY INSTITUTIONS.—At the time of the transaction, no insured depository institution controlled by the acquiring bank holding company is undercapitalized.

(v) WELL MANAGED.—

(I) IN GENERAL.—At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institutions that control at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

(II) NO POORLY MANAGED INSTITUTIONS.—Except with respect to insured depository institutions described in paragraph (2), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review.

(B) NO UNSATISFACTORY CRA RATINGS.—Except with respect to insured depository institutions described in paragraph (3), no insured depository institution controlled by

the acquiring bank holding company has received a "needs to improve" or "substantial noncompliance" composite rating as a result of the institution's most recent examination under the Community Reinvestment Act of 1977.

(C) COMPETITIVE CRITERIA.—Consummation of the proposal complies with guidelines established by the Board by regulation, after consultation with the Attorney General, that identify proposals that are not likely to have a significantly adverse effect on competition in any relevant market.

(D) SIZE OF ACQUISITION.—

(i) ASSET SIZE.—The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk weighted assets of the acquiring bank holding company.

(ii) CONSIDERATION.—The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

(E) INTERSTATE ACQUISITIONS.—Board approval of the transaction is not prohibited under subsection (d).

(F) COMPLIANCE CRITERION.—During the 12-month period ending on the date of the transaction, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act, against any bank holding company involved in the transaction or any depository institution subsidiary of any such holding company and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.

(G) OTHER CONSIDERATIONS.—Board approval of the transaction is not prohibited under subsection (c)(3).

(H) NOTIFICATION.—The acquiring bank holding company provides written notice of the transaction, including a description of the terms of the transaction, to the Board and the Attorney General, simultaneously, at least 15 business days (or such shorter period as permitted by the Board) before the transaction is consummated.

(I) NO BOARD DISAPPROVAL.—Before the end of the 15-day period (or the shorter period) referred to in subparagraph (H), the Board has not required an application under subsection (a).

(2) SPECIAL RULE RELATING TO THE REQUIREMENT FOR WELL MANAGED INSTITUTIONS.—Insured depository institutions which have been acquired by a bank holding company during the 12-month period preceding the date of the transaction may be excluded for purposes of paragraph (1)(A)(v)(II) if—

(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the holding company.

(3) SPECIAL RULE RELATING TO THE REQUIREMENT FOR COMMUNITY INVESTMENT.—Insured depository institutions acquired during the 12-month period preceding the date of the transaction may be excluded for purposes of paragraph (1)(B) if the bank holding company has developed a plan to restore the performance of the institution to at least a "satisfactory" rating under the Community Reinvestment Act of 1977 which is acceptable to the appropriate Federal banking agency.

(4) ADJUSTMENT OF PERCENTAGES.—The Board may by regulation adjust the percentages and the manner in which the percentages of insured depository institutions are calculated under subparagraph (A)(v)(I) or (D) of paragraph (1) or paragraph (2)(B) if the Board determines that such adjustment is consistent with safety and soundness and the purposes of this Act.

(5) ADVICE OF ATTORNEY GENERAL.—The Attorney General shall advise the Board during the period referred to in paragraph (1)(H) in writing if any competitive concerns exist with respect to the transaction.

(6) WAIVER OF POSTAPPROVAL WAITING PERIOD.—If the Attorney General advises the Board that no competitive concerns exist with respect to the transaction, the provisions of section 11(b) relating to a postapproval waiting shall not apply with respect to such transaction.

INTERESTS IN NONBANKING ORGANIZATIONS

SEC. 4. (a) * * *

* * * * * * *

(c) The prohibitions in this section shall not apply to (i) any company that was on January 4, 1977, both a bank holding company and a labor, agricultural, or horticultural organization exempt from taxation under section 501 of the Internal Revenue Code of 1954, or to any labor, agricultural, or horticultural organization to which all or substantially all of the assets of such company are hereafter transferred, or (ii) a company covered in 1970 more than 85 per centum of the voting stock of which was collectively owned on June 30, 1968, and continuously thereafter, directly or indirectly, by or for members of the same family, or their spouses, who are lineal descendants of common ancestors; and such prohibitions shall not, with respect to any other bank holding company, apply to—

(1) shares of any company engaged or to be engaged solely in one or more of the following activities: (A) holding or operating properties used wholly or substantially by any banking subsidiary of such bank holding company in the operations of such banking subsidiary or acquired for such future use; or (B) conducting a safe deposit business; or (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries; or (D) liquidating assets acquired from such bank holding company or its banking subsidiaries or acquired from any other source prior to May 9, 1956, or the date on which such company became a bank holding company, whichever is later;

(2) shares acquired by a bank holding company or any of its subsidiaries in satisfaction of a debt previously contracted in

good faith, but such shares shall be disposed of within a period of two years from the date on which they were acquired, except that the Board is authorized upon application by such bank holding company to extend such period of two years from time to time as to such holding company [for not more than one year at a time] if, in its judgment, such an extension would not be detrimental to the public interest, [but no such extensions shall extend beyond a date five years] *and, in the case of a bank holding company which has not disposed of such shares within 5 years of the date such shares were acquired, the Board may, upon the application of such company, grant additional exemptions if, in the Board's judgment, such extension would not be detrimental to the public interest and either the bank holding company has made a good faith attempt to dispose of such shares during such 5-year period or the disposal of such shares during such 5-year period would have been detrimental to the company, but the aggregate duration of such extensions shall not extend 10 years* after the date on which such shares were acquired;

* * * * * * *

(8) shares of any company the activities of which the Board after due notice [and opportunity for hearing] has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, but for purposes of this subsection it is not closely related to banking or managing or controlling banks for a bank holding company to provide insurance as a principal, agent, or broker except (A) where the insurance is limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death, disability, or involuntary unemployment of the debtor; (B) in the case of a finance company which is a subsidiary of a bank holding company, where the insurance is also limited to assuring repayment of the outstanding balance on an extension of credit in the event of loss or damage to any property used as collateral on such extention of credit and, during the period beginning on the date of the enactment of this subparagraph and ending on December 31, 1982, such extension of credit is not more than $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) and for any given year after 1982, such extension of credit is not more than an amount equal to $10,000 ($25,000 in the case of an extension of credit which is made to finance the purchase of a residential manufactured home and which is secured by such residential manufactured home) increased by the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published monthly by the Bureau of Labor Statistics for the period beginning on January 1, 1982, and ending on December 31 of the year preceding the year in which such extension of credit is made; (C) any insurance agency activity in a place that (i) has a population not exceeding five thousand (as shown by the last preceding decennial census), or (ii) the

bank holding company, after notice and opportunity for a hearing, demonstrates has inadequate insurance agency facilities; (D) any insurance agency activity which was engaged in by the bank holding company or any of its subsidiaries on May 1, 1982, or which the Board approved for such company or any of its subsidiaries on or before May 1, 1982, including (i) sales of insurance at new locations of the same bank holding company or the same subsidiary or subsidiaries with respect to which insurance was sold on May 1, 1982, or approved to be sold on or before May 1, 1982, if such new locations are confined to the State in which the principal place of business of the bank holding company is located, any State or States immediately adjacent to such State, and any State or States in which insurance activities were conducted by the bank holding company or any of its subsidiaries on May 1, 1982, or were approved to be conducted by the bank holding company or any of its subsidiaries on or before May 1, 1982, and (ii) sales of insurance coverages which may become available after May 1, 1982, so long as those coverages insure against the same types of risks as, or are otherwise functionally equivalent to, coverages sold on May 1, 1982, or approved to be sold on or before May 1, 1982 (for purposes of this subparagraph, activities engaged in or approved by the Board on May 1, 1982, shall include activities carried on subsequent to that date as the result of an application to engage in such activities pending on May 1, 1982, and approved subsequent to that date or of the acquisition by such company pursuant to a binding written contract entered into on or before May 1, 1982, of another company engaged in such activities at the time of the acquisition); (E) any insurance activity where the activity is limited solely to supervising on behalf of insurance underwriters the activities of retail insurance agents who sell (i) fidelity insurance and property and casualty insurance on the real and personal property used in the operations of the bank holding company or any of its subsidiaries, and (ii) group insurance that protects the employees of the bank holding company or any of its subsidiaries; (F) any insurance agency activity engaged in by a bank holding company, or any of its subsidiaries, which bank holding company has total assets of $50,000,000 or less: *Provided, however,* That such a bank holding company and its subsidiaries may not engage in the sale of life insurance or annuities except as provided in subparagraph (A), (B), or (C); or (G) where the activity is performed, or shares of the company involved are owned, directly or indirectly, by a bank holding company which is registered with the Board of Governors of the Federal Reserve System and which, prior to January 1, 1971, was engaged, directly or indirectly, in insurance agency activities as a [consequence of approval by the Board prior to January 1, 1971.] *consequence of approval by the Board prior to January 1, 1971, except that, after March 30, 1997, it shall be closely related to banking or managing or controlling banks and a proper incident thereto to provide insurance as a principal, agent, or broker in any State, in full compliance with the laws and regulations of such State that apply uniformly to each type of*

insurance license or authorization in that State, including laws that restrict a bank in that State from having an affiliate, agent, or employee in that State licensed to provide insurance as principal, agent, or broker. The Board shall prescribe regulations concerning insurance affiliations that provide equivalent treatment for all stock and mutual fund insurance companies that control or are affiliated with a bank, and fully accommodate and are consistent with State law. In determining whether a particular activity is a proper incident to banking or managing or controlling banks the Board shall consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. In orders and regulation under this subsection, the Board may differentiate between activities commenced de novo and activities commenced by the acquisition, in whole or in part, of a going concern. Notwithstanding any other provision of this Act, if the Board finds that an emergency exists which requires the Board to act immediately on any application under this subsection involving a thrift institution, and the primary Federal regulator of such institution concurs in such finding, the Board may dispense with the notice and hearing requirement of this subsection and the Board may approve or deny any such application without notice or hearing. If an application is filed under this paragraph in connection with an application to make an acquisition pursuant to section 13(f) of the Federal Deposit Insurance Act, the Board may dispense with the notice and hearing requirement of this paragraph and the Board may approve or deny the application under this paragraph without notice or hearing. If an application described in the preceding sentence is approved, the Board shall publish in the Federal Register, not later than 7 days after such approval is granted, the order approving the application and a description of the nonbanking activities involved in the acquisition;

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(i) ACQUISITION OF SAVINGS ASSOCIATIONS.—

(1) * * *

* * * * * * *

(4) SOLICITATION OF VIEWS.—

(A) NOTICE TO DIRECTOR.—Upon receiving any application or notice by a bank holding company to acquire directly or indirectly a savings association under subsection (c)(8), the Board shall solicit the Director's comments and recommendations with respect to such acquisition.

(B) COMMENT PERIOD.—The comments and views of the Director under subparagraph (A) with respect to any acquisition subject to such subparagraph shall be transmitted to the Board within 30 days of the receipt by the Director of the notice relating to such acquisition (or such shorter period as the Board may specify if the Board advises the Di-

rector that an emergency exists which requires expeditious action).

(5) EXAMINATION.—

(A) SCOPE.—The Board shall consult with the Director, as appropriate, in establishing the scope of an examination by the Board of a bank holding company that controls directly or indirectly a savings association.

(B) ACCESS TO INSPECTION REPORTS.—Upon the request of the Director, the Board shall furnish the Director with a copy of any inspection report, additional examination materials, or supervisory information relating to any bank holding company which directly or indirectly controls a savings association.

(6) COORDINATION OF ENFORCEMENT EFFORTS.—The Board and the Director shall cooperate in any enforcement action against any bank holding company which controls a savings association, if the relevant conduct involves such association.

(7) DIRECTOR DEFINED.—For purposes of this section, the term "Director" means the Director of the Office of Thrift Supervision.

(j) NOTICE PROCEDURES FOR NONBANKING ACTIVITIES.—

(1) GENERAL NOTICE PROCEDURE.—

(A) NOTICE REQUIREMENT.—[No] *Except as provided in paragraph (3), no* bank holding company may engage in any nonbanking activity or acquire or retain ownership or control of the shares of a company engaged in activities based on subsection (c)(8) or (a)(2) without providing the Board with written notice of the proposed transaction or activity at least 60 days before the transaction or activity is proposed to occur or commence.

* * * * * * *

(3) NO NOTICE REQUIRED FOR CERTAIN TRANSACTIONS.—No notice under paragraph (1) or subsections (c)(8) or (a)(2)(B) is required for a proposal by a bank holding company to engage in any activity or acquire the shares or assets of any company if the proposal qualifies under paragraph (4).

(4) CRITERIA FOR STATUTORY APPROVAL.—A proposal qualifies under this paragraph if all of the following criteria are met:

(A) FINANCIAL CRITERIA.—Both before and immediately after the proposed transaction—

(i) the acquiring bank holding company is well capitalized;

(ii) the lead insured depository institution of such holding company is well capitalized;

(iii) well capitalized insured depository institutions control at least 80 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company; and

(iv) no insured depository institution controlled by such holding company is undercapitalized.

(B) MANAGERIAL CRITERIA.—

(i) WELL MANAGED.—At the time of the transaction, the acquiring bank holding company, its lead insured depository institution, and insured depository institu-

tions that control at least 90 percent of the aggregate total risk-weighted assets of insured depository institutions controlled by such holding company are well managed.

(ii) LIMITATION ON POORLY MANAGED INSTITUTIONS.—Except with respect to insured depository institutions described in paragraph (6), no insured depository institution controlled by the acquiring bank holding company has received 1 of the 2 lowest composite ratings at the later of the institution's most recent examination or subsequent review.

(C) ACTIVITIES PERMISSIBLE.—Following consummation of the proposal, the bank holding company engages directly or through a subsidiary solely in—

(i) activities that are permissible under subsection (c)(8), as determined by the Board by regulation or order thereunder, subject to all of the restrictions, terms and conditions of such subsection and such regulation or order; and

(ii) such other activities as are otherwise permissible under this section, subject to the restrictions, terms and conditions, including any prior notice or approval requirements, provided in this section.

(D) SIZE OF ACQUISITION.—

(i) ASSET SIZE.—The book value of the total assets to be acquired does not exceed 10 percent of the consolidated total risk-weighted assets of the acquiring bank holding company; and

(ii) CONSIDERATION.—The gross consideration to be paid for the securities or assets does not exceed 15 percent of the consolidated Tier 1 capital of the acquiring bank holding company.

(E) NOTICE NOT OTHERWISE WARRANTED.—For proposals described in paragraph (5)(B), the Board has not, before the conclusion of the period provided in paragraph (5)(B), advised the bank holding company that a notice under paragraph (1) is required.

(F) COMPLIANCE CRITERION.—During the 12-month period ending on the date on which the bank holding company proposes to commence an activity or acquisition, no administrative enforcement action has been commenced, and no cease and desist order has been issued pursuant to section 8 of the Federal Deposit Insurance Act, against the bank holding company or any depository institution subsidiary of the holding company and no such enforcement action, order, or other administrative enforcement proceeding is pending as of such date.

(5) NOTIFICATION.—

(A) COMMENCEMENT OF ACTIVITIES APPROVED BY RULE.—A bank holding company that qualifies under paragraph (4) and that proposes to engage de novo, directly or through a subsidiary, in any activity that is permissible under subsection (c)(8), as determined by the Board by regulation, may commence that activity without prior notice to the

Board and must provide written notification to the Board no later than ten business days after commencing the activity.

(B) ACTIVITIES PERMITTED BY ORDER AND ACQUISITIONS.—

(i) IN GENERAL.—At least 12 business days before commencing any activity pursuant to paragraph (3) (other than an activity described in subparagraph (A)) or acquiring shares or assets of any company pursuant to paragraph (3), the bank holding company shall provide the written notification of the proposal to the Board, unless the Board determines that no notice or a shorter notice period is appropriate.

(ii) DESCRIPTION OF ACTIVITIES AND TERMS.—A notification under this subparagraph shall include a description of the proposed activities and the terms of any proposed acquisition.

(6) RECENTLY ACQUIRED INSTITUTIONS.—Insured depository institutions which have been acquired by a bank holding company during the 12-month period preceding the date on which the company proposes to commence an activity or acquisition pursuant to paragraph (3) may be excluded for purposes of paragraph (4)(B)(ii) if—

(A) the bank holding company has developed a plan for the institution to restore the capital and management of the institution which is acceptable to the appropriate Federal banking agency; and

(B) all such insured depository institutions represent, in the aggregate, less than 10 percent of the aggregate total risk-weighted assets of all insured depository institutions controlled by the bank holding company.

(7) ADJUSTMENT OF PERCENTAGES.—The Board may, by regulation, adjust the percentages and the manner in which the percentages of insured depository institutions are calculated under paragraph (4)(B)(i), (4)(D), or paragraph (6)(B) if the Board determines that any such adjustment is consistent with safety and soundness and the purposes of this Act.

* * * * * * *

NATIONAL BANK CONSOLIDATION AND MERGER ACT

* * * * * * *

SEC. 2. CONSOLIDATION OF BANKS WITHIN THE SAME STATE.

(a) IN GENERAL.—Any national bank or any bank incorporated under the laws of any State may, with the approval of the Comptroller, be consolidated with one or more national banking associations located in the same State under the charter of a national banking association on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each association or bank proposing to consolidate, and be ratified and confirmed by the affirmative vote of the shareholders of each such association or bank owning at least two-thirds of its capital stock outstanding, or by a greater proportion of such capital stock in the

case of such State bank if the laws of the State where it is organized so require, at a meeting to be held on the call of the directors after publishing notice of the time, place, and object of the meeting for four consecutive weeks in a newspaper of general circulation published in the place where the association or bank is located, or, if there is no such newspaper, then in the paper of general circulation published nearest thereto, and after sending such notice to each shareholder of record by certified or registered mail at least ten days prior to the meeting, except to those shareholders who specifically waive notice, but any additional notice shall be given to the shareholders of such State bank which may be required by the laws of the State where it is organized. Publication of notice may be waived, in cases where the Comptroller determines that an emergency exists justifying such waiver, by unanimous action of the shareholders of the association or State bank. *No approval by the Comptroller of the Currency is required under this subsection for a transaction which involves the consolidation of banks that, at the time of the consolidation, are all subsidiaries (as defined in section 3 of the Federal Deposit Insurance Act) of the same company.*

(b) The consolidated association shall be liable for all liabilities of the respective consolidating banks or associations. The capital stock of such consolidated association shall not be less than that required under existing law for the organization of a national bank in the place in which it is located: *Provided*, That if such consolidation shall be voted for at such meetings by the necessary majorities of the shareholders of each association and State bank proposing to consolidate[, and thereafter the consolidation shall be approved by the Comptroller], any shareholder of any of the associations or State banks so consolidated who has voted against such consolidation at the meeting of the association or bank of which he is a stockholder, or who has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of consolidation, shall be entitled to receive the value of the shares so held by him [when such consolidation is approved by the Comptroller] upon written request made to the consolidated association at any time before thirty days after the date of consummation of the consolidation, accompanied by the surrender of his stock certificates.

* * * * * * *

SEC. 3. (a) One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this Act, may merge into a national banking association located within the same State, under the charter of the receiving association. The merger agreement shall—

(1) * * *

* * * * * * *

No approval by the Comptroller of the Currency is required under this subsection for a transaction which involves the merger of banks that, at the time of the merger, are all subsidiaries (as defined in section 3 of the Federal Deposit Insurance Act) of the same company.

(b) If a merger shall be voted for at the called meetings by the necessary majorities of the shareholders of each association or

State bank participating in the plan of merger[, and thereafter the merger shall be approved by the Comptroller], any shareholder of any association or State bank to be merged into the receiving association who has voted against such merger at the meeting of the association or bank of which he is a stockholder, or has given notice in writing at or prior to such meeting to the presiding officer that he dissents from the plan of merger shall be entitled to receive the value of the shares so held by him [when such merger shall be approved by the Comptroller] upon written request made to the receiving association at any time before thirty days after the date of consummation of the merger, accompanied by the surrender of his stock certificates.

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REVISED STATUTES

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TITLE LXII

NATIONAL BANKS

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CHAPTER ONE

ORGANIZATION AND POWERS

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5133. Formation of national banking associations.
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SEC. 5136. [Upon duly making and filing articles of association] *(a) IN GENERAL.—Upon duly making and filing articles of association* and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First. To adopt and use a corporate seal.

Second. To have succession from the date of the approval of this Act, or from the date of its organization if organized after such date of approval until such time as it be dissolved by the act of its shareholders owning two-thirds of its stock, or until its franchise becomes forfeited by reason of violation of law, or until terminated by either a general or a special Act of Congress or until its affairs be placed in the hands of a receiver and finally wound up by him.

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Seventh. To exercise by its board of directors or duly authorized officers or agents, [subject to law,] *subject to subsection (b), section 5136A, and any other provision of law,* all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this title. The business of dealing in securities and stock by the association shall be limited to purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of, customers, and in no case for its own account, and the association shall not underwrite any issue of securities or stock: *Provided,* That the association may purchase for its own account investment securities under such limitations and restrictions as the Comptroller of the Currency may by regulation prescribe. In no event shall the total amount of the investment securities of any one obligor or maker, held by the association for its own account, exceed at any time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund, except that this limitation shall not require any association to dispose of any securities lawfully held by it on the date of enactment of the Banking Act of 1935. As used in this section the term "investment securities" shall mean marketable obligations evidencing indebtedness of any person, copartnership, association, or corporation in the form of bonds, notes and/or debentures commonly known as investment securities under such further definition of the term "investment securities" as may by regulation be prescribed by the Comptroller of the Currency. Except as hereinafter provided or otherwise permitted by law, nothing herein contained shall authorize the purchase by the association for its own account of any shares of stock of any corporation. The limitations and restrictions herein contained as to dealing in, underwriting and purchasing for its own account, investment securities shall not apply to obligations of the United States, or general obligations of any State or of any political subdivision thereof, or obligations of the Washington Metropolitan Area Transit Authority which are guaranteed by the Secretary of Transportation under section 9 of the National Capital Transportation Act of 1969, or obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the thirteen banks for cooperatives or any of them or the Federal Home Loan Banks, or obligations which are insured by the Secretary of Housing and Urban Development under title XI of the National Housing Act, or obligations which are insured by the Secretary of Housing and Urban Development (hereafter in this sentence referred to as the "Secretary" pursuant to section 207 of the National Housing Act, if the debentures to be issued in payment of such insured obligations are guaranteed as to principal and interest by the United States, or obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, or mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or sec-

tion 306 of the Federal Home Loan Mortgage Corporation Act or obligations of the Federal Financing Bank or obligations of the Environmental Financing Authority or obligations or other instruments or securities of the Student Loan Marketing Association, or such obligations of any local public agency (as defined in section 110 (h) of the Housing Act of 1949) as are secured by an agreement between the local public agency and the Secretary in which the local public agency agrees to borrow from said Secretary and said Secretary agrees to lend to said local public agency, monies in an aggregate amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay, when due, the interest on and all installments (including the final installment) of the principal of such obligations, which monies under the terms of said agreement are required to be used for such payments, or such obligations of a public housing agency (as defined in the United States Housing Act of 1937, as amended) as are secured (1) by an agreement between the public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary and the Secretary agrees to lend to the public housing agency, prior to the maturity of such obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of such obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity, (2) by a pledge of annual contributions under an annual contributions contract between such public housing agency and the Secretary if such contract shall contain the covenant by the Secretary which is authorized by subsection (b) of section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to said subsection 22(b) shall not be less than the annual amount and the period for payment which are requisite to provide for the payment when due of all installments of principal and interest on such obligations, or (3) by a pledge or both annual contributions under an annual contributions contract containing the covenant by the Secretary which is authorized by section 6(g) of the United States Housing Act of 1937, and a loan under an agreement between the local public housing agency and the Secretary in which the public housing agency agrees to borrow from the Secretary, and the Secretary agrees to lend to the public housing agency, prior to the maturity of the obligations involved, moneys in an amount which (together with any other moneys irrevocably committed under the annual contributions contract to the payment of principal and interest on such obligations) will suffice to provide for the payment when due of all installments of principal and interest on such obligations, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal and interest on such obligations at their maturity: *Provided,* That in carrying on the business commonly known as the safe-deposit business the association shall not invest in the capital stock of a corporation organized under the law of any State to conduct a safe-deposit business in an amount in excess of 15 per centum of the

capital stock of the association actually paid in and unimpaired and 15 per centum of its unimpaired surplus. The limitations and restrictions herein contained as to dealing in and underwriting investment securities shall not apply to obligations issued by the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank the African Development Bank, the Inter-American Investment Corporation, or the International Finance Corporation, or obligations issued by any State or political subdivision or any agency of a State or political subdivision for housing, university, or dormitory purposes, which are at the time eligible for purchase by a national bank for its own account, nor to bonds, notes and other obligations issued by the Tennessee Valley Authority or by the United States Postal Service,: *Provided*, That no association shall hold obligations issued by any of said organizations as a result of underwriting, dealing, or purchasing for its own account (and for this purpose obligations as to which it is under commitment shall be deemed to be held by it) in a total amount exceeding at any one time 10 per centum of its capital stock actually paid in and unimpaired and 10 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of that Act. Notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock issued by any State housing corporation incorporated in the State in which the association is located and may make investments in loans and commitments for loans to any such corporation: *Provided*, That in no event shall the total amount of such stock held for its own account and such investments in loans and commitments made by the association exceed at any time 5 per centum of its capital stock actually paid in and unimpaired plus 5 per centum of its unimpaired surplus fund. Notwithstanding any other provision in this paragraph, the association may purchase for its own account shares of stock issued by a corporation organized solely for the purpose of making loans to farmers and ranchers for agricultural purposes, including the breeding, raising, fattening, or marketing of livestock. However, unless the association owns at least 80 per centum of the stock of such agricultural credit corporation the amount invested by the association at any one time in the stock of such corporation shall not exceed 20 per centum of the unimpaired capital and surplus of the association: *Provided further*, That notwithstanding any other provision of this paragraph, the association may purchase for its own account shares of stock of a bank insured by the Federal Deposit Insurance Corporation or a holding company which owns or controls such an insured bank if the stock of such bank or company is owned exclusively (except to the extent directors' qualifying shares are required by law) by depository institutions or depository institution holding companies (as defined in section 3 of the Federal Deposit Insurance Act) and such bank or company and all subsidiaries thereof are engaged exclu-

sively in providing services to or for other depository institutions, their holding companies, and the officers, directors, and employees of such institutions and companies, and in providing correspondent banking services at the request of other depository institutions or their holding companies (also referred to as a "banker's bank"), but in no event shall the total amount of such stock held by the association in any bank or holding company exceed at any time 10 per centum of the associations capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in an association's acquiring more than 5 per centum of any class of voting securities of such bank or company. The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); (B) are small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934); or (C) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)). The exception provided for the securities described in subparagraphs (A), (B), and (C) shall be subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both. A national banking association may deal in, underwrite, and purchase for such association's own account qualified Canadian government obligations to the same extent that such association may deal in, underwrite, and purchase for such association's own account obligations of the United States or general obligations of any State or of any political subdivision thereof. For purposes of this paragraph—

(1) the term "qualified Canadian government obligations" means any debt obligation which is backed by Canada, any Province of Canada, or any political subdivision of any such Province to a degree which is comparable to the liability of the United States, any State, or any political subdivision thereof for any obligation which is backed by the full faith and credit of the United States, such State, or such political subdivision, and such term includes any debt obligation of any agent of Canada or any such Province or any political subdivision of such Province if—

(A) the obligation of the agent is assumed in such agent's capacity as agent for Canada or such Province or such political subdivision; and

(B) Canada, such Province, or such political subdivision on whose behalf such agent is acting with respect to such obligation is ultimately and unconditionally liable for such obligation; and

(2) the term "Province of Canada" means a Province of Canada and includes the Yukon Territory and the Northwest Territories and their successors.

(b) INTERPRETIVE AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.—

(1) IN GENERAL.—Subject to paragraph (2), it shall not be incidental to banking for a national bank to provide insurance as a principal, agent, or broker.

(2) SCOPE OF APPLICATION.—Notwithstanding paragraph (1), it shall be incidental to banking for a national bank to engage in the following activities:

(A) Providing, as an agent or broker, any annuity contract the income on which is tax deferred under section 72 of the Internal Revenue Code of 1986.

(B) Providing, as a principal, agent, or broker, any type of insurance, other than an annuity or title insurance, which the Comptroller of the Currency specifically determined, before May 1, 1995, to be incidental to banking with respect to national banks.

SEC. 5136A. STATE SUPERVISION OF INSURANCE.

(a) STATE LICENSING OF INSURANCE ACTIVITIES.—

(1) IN GENERAL.—Subject to paragraph (2), no provision of section 5136, any other section of this title, or section 13 of the Federal Reserve Act may be construed as limiting or otherwise impairing the authority of any State to regulate—

(A) the extent to which, and the manner in which, a national bank may engage within the State in insurance activities pursuant to section 5136B of this chapter or section 13 of the Federal Reserve Act;

(B) the manner in which a national bank may engage within the State in insurance activities pursuant to section 5136(b)(2)(B) of the Revised Statutes of the United States; or

(C) the manner in which a national bank may engage within the State in insurance activities pursuant to section 5136(b)(2)(A) of the Revised Statutes of the United States through, and limited to, consumer disclosure requirements or licensing requirements, procedures, and qualifications as described in paragraph (2)(C).

(2) PROHIBITION ON STATE DISCRIMINATION AGAINST NATIONAL BANKS.—Notwithstanding paragraph (1)—

(A) PROVIDING INSURANCE AS AGENT OR BROKER.—No State may impose any insurance regulatory requirement relating to providing insurance as an agent or broker that treats a national bank differently than all other persons who are authorized to provide insurance as agents or brokers in such State, unless there is a legitimate and reasonable State regulatory purpose for the requirement for which there is no less restrictive alternative.

(B) PROVIDING INSURANCE AS PRINCIPAL, AGENT, OR BROKER.—

(i) No State may impose on a national bank any insurance regulatory requirement relating to providing insurance as principal, agent, or broker that treats the national bank more restrictively than any other depository institution (as defined in section 3(c)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(1)) operating in the State.

(ii) Nothing in this subparagraph shall affect the validity of a State law that—

(I) prevents a national bank from engaging in insurance activities within the State to as great an extent as a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(b)(1)) may engage in such activities within the State; and

(II) was in effect on June 1, 1995.

(C) LICENSING QUALIFICATIONS AND PROCEDURES.—No State may discriminate against a national bank with respect to the following requirements, procedures, and qualifications as such requirements, procedures, and qualifications relate to the authority of the national bank to provide insurance in such State as an agent or broker:

(i) License application and processing procedures.

(ii) Character, experience, and educational qualifications for licenses.

(iii) Testing and examination requirements for licenses.

(iv) Fee requirements for licenses.

(v) Continuing education requirements.

(vi) Types of licenses required.

(vii) Standards and requirements for renewal of licenses.

(b) AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.—A national bank may not provide insurance as a principal, agent, or broker except as specifically provided in this section, the paragraph designated as the "Seventh" of section 5136(a) of this chapter, section 5136(b) or 5136B of this chapter, or section 13 of the Federal Reserve Act.

(c) PRESERVATION OF FEDERALLY AUTHORIZED BANK ACTIVITIES IN PERMISSIVE STATES.—No provision of this section may be construed as affecting the authority, pursuant to section 5136B of this chapter or section 13 of the Federal Reserve Act, of a national bank to act as insurance agent or broker consistent with State law.

(d) PRESERVATION OF NATIONAL BANK AUTHORITY CONSISTENT WITH STATE BANK AUTHORITY.—Except as provided in subsection (a)(2)(B), no provision of this section or section 5136(b)(1) shall have the effect of enabling a State to deny a national bank authority that the bank otherwise possesses to provide a product in a State, including as agent, broker, or principal, where the bank is not providing the product in the State other than to an extent and in a manner that a State bank (as defined in section 3(a)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(a)(2)) is permitted by the law of the State to provide such product, except that nothing in this subsection shall be construed as granting any new authority to a national bank to provide any product because the law of the State has authorized State banks to provide such product.

(e) DEFINITIONS.—For purposes of this section, sections 5136 and 5136B, and section 13 of the Federal Reserve Act, the following definitions shall apply:

(1) INSURANCE.—The term "insurance" means any product defined or regulated as insurance, consistent with the relevant

State insurance law, by the insurance regulatory authority of the State in which such product is sold, solicited, or underwritten, including any annuity contract the income on which is tax deferred under section 72 of the Internal Revenue Code of 1986.

(2) STATE.—The term "State" has the same meaning as in section 3(a)(3) of the Federal Deposit Insurance Act.

(f) GRANDFATHER PROVISION.—

(1) IN GENERAL.—Any national bank which, before January 1, 1995, was providing insurance as agent or broker under section 13 of the Federal Reserve Act may provide insurance as an agent or broker under such section, to no less extent and in a no more restrictive manner as such bank was providing insurance as agent or broker under such section on January 1, 1995, notwithstanding contrary State law, subject to final, controlling judgment in a pending action.

(2) TERMINATION.—This subsection shall cease to apply with respect to any national bank described in paragraph (1) if—

(A) the bank is subject to an acquisition, merger, consolidation, or change in control, other than a transaction to which section 18(c)(12) of the Federal Deposit Insurance Act applies; or

(B) any bank holding company which directly or indirectly controls such bank is subject to an acquisition, merger, consolidation, or change in control, other than a transaction in which the beneficial ownership of such bank holding company or of a bank holding company which controls such company does not change as a result of the transaction.

(g) PRESERVATION OF BANKING PRODUCTS.—Nothing in this section shall be construed as affecting the ability of a national bank, or a subsidiary of a national bank, to engage in any activity, including any activity authorized pursuant to the paragraph designated the "Seventh" of section 5136(a), that is part of, and not merely incidental to, the business of banking.

SEC. 5136B. INSURANCE SALES IN EMPOWERMENT ZONES.

(a) AUTHORITY TO SELL INSURANCE AS AGENT FROM EMPOWERMENT ZONES.—The Comptroller of the Currency may approve an application by a national bank maintaining a main office or full-service branch in an empowerment zone to act as an agent or broker from such office or branch for any fire, life, or other insurance company authorized to do business in the State in which the customer is located if—

(1) the bank provides sufficient evidence that the availability of competitively priced insurance products in the empowerment zone is inadequate; and

(2) the insurance products are sold only in the empowerment zone.

(b) APPLICATION OF STATE LAW.—State laws which regulate conducting the business of insurance shall apply to national banks and their employees that sell insurance as agent or broker under this section to the same extent as such laws apply to other entities and persons not affiliated with depository institutions except—

(1) in any case in which the Comptroller of the Currency determines, after notice to and comment by the appropriate State insurance officials, that the application of a State law would have an unreasonably discriminatory effect upon the sale of insurance by national banks or their employees in comparison with the effect the application of the State law would have with respect to sale of insurance by other entities; or

(2) when State law by its own terms does not apply to national banks or employees of such banks.

(c) AUTHORITY OF COMPTROLLER OF THE CURRENCY.—

(1) IN GENERAL.—The Comptroller of the Currency may prescribe regulations governing sales of insurance by national banks pursuant to this section.

(2) ENFORCEMENT OF STATE LAW.—The provisions of any State law to which an national bank is subject under this section shall be enforced with respect to such bank by the Comptroller of the Currency.

(d) DEFINITIONS.—

(1) EMPOWERMENT ZONE.—The term "empowerment zone" means an area that meets the standards for designation as an empowerment zone or enterprise community under section 1392 of the Internal Revenue Code of 1986 or an Indian reservation.

(2) FULL-SERVICE BRANCH.—The term "full-service branch" means a staffed facility which has been approved as a branch and offers loan and deposit services.

(3) INDIAN RESERVATION.—The term "Indian reservation" has the meaning given such term by section 168(j)(6) of the Internal Revenue Code of 1986.

SEC. [5136A.] *5136C.* (a) A national bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

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SEC. 5146. Every director must during his whole term of service, be a citizen of the United States, and at least a majority of the directors must have resided in the State, Territory, or District in which the association is located, or within one hundred miles of the location of the office of the association, for at least one year immediately preceding their election, and must be residents of such State or within a one-hundred-mile territory of the location of the association during their continuance in office, except that *(1) the Comptroller of the Currency may, in the Comptroller's discretion, waive the residency requirement in the case of any director of a national bank to whom the requirement would otherwise apply, and (2)* in the case of an association which is a subsidiary or affiliate of a foreign bank, the Comptroller of the Currency may in his discretion waive the requirement of citizenship in the case of not more than a minority of the total number of directors. Every director must own in his or her own right either shares of the capital stock of the association of which he or she is a director the aggregate par value of which is not less than $1,000, or an equivalent interest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

If the capital of the bank does not exceed $25,000, every director must own in his or her own right either shares of such capital stock the aggregate par value of which is not less than $500, or an equivalent interest, as determined by the Comptroller of the Currency, in any company which has control over such association within the meaning of section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). Any director who ceases to be the owner of the required number of shares of the stock, or who becomes in any other manner disqualified, shall thereby vacate his place.

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SEC. 5155. The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) * * *

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[(h) The aggregate capital of every national banking association and its branches shall at no time be less than the aggregate minimum capital required by law for the establishment of an equal number of national banking associations situated in the various places where such association and its branches are situated.

[(i) No branch] *(h) RELOCATION.—*

(1) APPROVAL REQUIRED.—Except as provided in paragraph (2), no branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

(2) NO APPROVAL REQUIRED FOR CERTAIN BRANCHES.—Notwithstanding this subsection or subsection (b) or (c), the consent and approval of the Comptroller of the Currency shall not be required for a national bank to establish and operate, or to retain and operate, a branch or seasonal agency if—

(A) the bank is well capitalized (as defined in section 38 of the Federal Deposit Insurance Act and regulations prescribed by the Comptroller of the Currency under such section);

(B) the bank received a composite CAMEL rating of "1" or "2" under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination;

(C) the bank did not receive a "needs to improve" or "substantial noncompliance" composite rating at its most recent examination under the Community Reinvestment Act of 1977; and

(D) the Comptroller of the Currency is otherwise authorized to grant approval under this section to such bank to establish and operate, or to retain and operate, a branch or seasonal agency at the proposed location.

(3) CERTAIN BRANCHES DEEMED TO HAVE APPROVED APPLICATIONS.—A branch or seasonal agency established by a national bank under paragraph (2) shall be deemed to have been established and operated pursuant to an application approved under this section.

[(j) The term] *(i) BRANCH.—*

(1) IN GENERAL.—The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

(2) CERTAIN PROPRIETARY ATMS AND REMOTE SERVICING UNITS.—The term "branch" does not include any automated teller machine or remote service unit which is owned and operated by a depository institution—

(A) primarily for the benefit of the institution and the affiliates of the institution; and

(B) which could operate a branch at the location of such machine or unit.

[(k)**]** *(j)* This section shall not be construed to amend or repeal section 25 of the Federal Reserve Act, as amended, authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.

[(l)**]** *(k)* The words "State bank," "State banks," "bank," or "banks," as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

SEC. 5156A. MERGERS, CONSOLIDATIONS, AND OTHER ACQUISITIONS AUTHORIZED.

(a) * * *

(b) EXPEDITED APPROVAL OF ACQUISITIONS.—

(1) IN GENERAL.—Any application by a national bank to acquire or be acquired by another insured depository institution which is required to be filed with the Comptroller of the Currency by **[**section 5(d)(3) of the Federal Deposit Insurance Act or**]** any other applicable law or regulation shall be approved or disapproved in writing by the agency before the end of the 60-day period beginning on the date such application is filed with the agency.

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CHAPTER THREE

REGULATION OF THE BANKING BUSINESS

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SEC. 5211. (a) Every association shall make reports of condition to the Comptroller of the Currency in accordance with the Federal Deposit Insurance Act. The Comptroller of the Currency may call for additional reports of condition, in such form and containing such information as he may prescribe, on dates to be fixed by him, and may call for special reports from any particular association whenever in his judgment the same are necessary for his use in the performance of his supervisory duties. Each report of condition shall contain a declaration by the president, a vice president, the cashier, or by any other officer designated by the board of directors of the bank to make such declaration, that the report is true and

correct to the best of his knowledge and belief. [The correctness of the report of condition shall be attested by the signatures of least three of the directors of the bank other than the officer making such declaration, with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.] Each report shall exhibit in detail and under appropriate heads the resources and liabilities of the association at the close of business on any past day specified by the Comptroller, and shall be transmitted to the Comptroller within the period of time specified by the Comptroller. Special reports called for by the Comptroller need contain only such information as is specified by the Comptroller in his request therefore, and publication of such reports need to be made only if directed by the Comptroller.

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SECTION 10 OF THE HOME OWNERS' LOAN ACT

SEC. 10. REGULATION OF HOLDING COMPANIES.

(a) DEFINITIONS.—

(1) IN GENERAL.—As used in this section, unless the context otherwise requires—

(A) * * *

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[(D) SAVINGS AND LOAN HOLDING COMPANY.—The term "savings and loan holding company" means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company.]

(D) SAVINGS AND LOAN HOLDING COMPANY.—

(i) IN GENERAL.—Except as provided in clause (ii), the term "savings and loan holding company" means any company which directly or indirectly controls a savings association or controls any other company which is a savings and loan holding company.

(ii) EXCEPTION FOR BANK HOLDING COMPANY.—The term "savings and loan holding company" does not include any company which is registered under, and subject to, the provisions of the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company.

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(m) QUALIFIED THRIFT LENDER TEST.—

(1) IN GENERAL.—Except as provided in paragraphs [(2) and (7)] *(2), (7), and (8),* any savings association is a qualified thrift lender if—

(A) the savings association's qualified thrift investments equal or exceed 65 percent of the savings association's portfolio assets; and

(B) the savings association's qualified thrift investments continue to equal or exceed 65 percent of the savings asso-

ciation's portfolio assets on a monthly average basis in 9 out of every 12 months.

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(8) ALTERNATIVE TEST.—Any savings association which meets the requirements set forth in section 7701(a)(19)(C) of the Internal Revenue Code of 1986 shall be deemed to be a qualified thrift lender and any qualified thrift lender shall be deemed to meet the requirements of such section.

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(t) EXEMPTION FOR BANK HOLDING COMPANIES.—This section shall not apply to a bank holding company that is subject to the Bank Holding Company Act of 1956 or any company controlled by such bank holding company (other than a savings association).

FEDERAL RESERVE ACT

STATE BANKS AS MEMBERS

SEC. 9. Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, including Morris Plan banks and other incorporated banking institutions engaged in similar business, desiring to become a member of the Federal Reserve System, may make application to the Board of Governors of the Federal Reserve System, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. For the purposes of membership of any such bank the terms "capital" and "capital stock" shall include the amount of outstanding capital notes and debentures legally issued by the applying bank and purchased by the Reconstruction Finance Corporation. The Board of Governors of the Federal Reserve System, subject to the provisions of this Act and to such conditions as it may prescribe pursuant thereto may permit the applying bank to become a stockholder of such Federal reserve bank.

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Any such State bank which, at the date of the approval of this Act, has established and is operating a branch or branches in conformity with the State law, may retain and operate the same while remaining or upon becoming a stockholder of such Federal reserve bank; but no such State bank may retain or acquire stock in a Federal reserve bank except upon relinquishment of any branch or branches established after the date of the approval of this Act beyond the limits of the city, town, or village in which the parent bank is situated. *Provided, however,* That nothing herein contained shall prevent any State member bank from establishing and operating branches in the United States or any dependency or insular possession thereof or in any foreign country, on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national

banks except that the approval of the Board of Governors of the Federal Reserve System, instead of the Comptroller of the Currency, shall be obtained before any State member bank may hereafter establish any branch and before any State bank hereafter admitted to membership may retain any branch established after February 25, 1927, beyond the limits of the city, town, or village in which the parent bank is situated. The approval of the Board shall likewise be obtained before any State member bank may establish any new branch within the limits of any such city, town, or village (except within the District of Columbia.) *Notwithstanding the preceding 2 sentences, the approval of the Board shall not be required for a State member bank to establish and operate a branch or seasonal agency if—*

(A) the State member bank is well-capitalized (as defined in section 38 of the Federal Deposit Insurance Act and regulations prescribed by the Board under such section);

(B) the State member bank received a composite CAMEL rating of "1" or "2" under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system);

(C) the State member bank did not receive a "needs to improve" or "substantial noncompliance" composite rating at its most recent examination under the Community reinvestment Act; and

(D) the Board is otherwise authorized to grant approval under this section to such State member bank to establish and operate a branch or seasonal agency at the proposed location.

A branch or seasonal agency established by a State member bank under the previous sentence shall be deemed to have been established and operated pursuant to an application approved under this section.

* * * * * * *

POWERS OF FEDERAL RESERVE BANKS

SEC. 13. Any Federal reserve bank may receive from any of its member banks or other depository institutions, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation or other items, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district or other items, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company or other depository institution deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation or other items, or maturing notes and bills: *Provided,* Such nonmember bank or trust company or other depository institution maintains with the Federal reserve bank of its district a balance in such amount as the Board determines taking into account items in transit, services provided by the

Federal Reserve bank, and other factors as the Board may deem appropriate: *Provided further,* That nothing in this or any other section of this Act shall be construed as prohibiting a member or nonmember bank or other depository institution from making reasonable charges, to be determined and regulated by the Board of Governors of the Federal Reserve System, but in no case to exceed 10 cents per $100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks.

* * * * * * *

That in addition to the powers not vested by law in national banking associations organized under the laws of the United States, *and subject to section 5136A of the Revised Statutes of the United States,* any such association located and doing business in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent: *Provided, however,* That no such bank shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: *And provided further,* That the bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance.

* * * * * * *

SEC. 22. * * *

(d) * * *

* * * * * * *

(g)(1) Except as authorized under this subsection, no member bank may extend credit in any manner to any of its own executive officers. No executive officer of any member bank may become indebted to that member bank except by means of an extension of credit which the bank is authorized to make under this subsection. Any extension of credit under this subsection shall be promptly reported to the board of directors of the bank, and may be made only if—

(A) the bank would be authorized to make it to borrowers other than its officers;

(B) it is on terms not more favorable than those afforded other borrowers;

(C) the officer has submitted a detailed current financial statement; and

(D) it is on condition that it shall become due and payable on demand of the bank at any time when the officer is indebted to any other bank or banks on account of extensions of

credit [of any one of the three categories respectively referred to in paragraphs (2), (3), and (4)] *of any category referred to in paragraph (2), (3), (4), (5), or (6)* in an aggregate amount greater than the amount of credit of the same category that could be extended to him by the bank of which he is an officer.

* * * * * * *

(4) HOME EQUITY LINES OF CREDIT.—A member bank may make a revolving open-end extension of credit to any executive officer of the bank if the credit—

(A) does not exceed $100,000; and

(B) is secured by a dwelling that is owned by such officer and used by the officer as a residence.

(5) LOANS SECURED BY MARKETABLE ASSETS.—A member bank may extend credit to any executive officer of the bank if the credit is secured by readily marketable assets of a value not exceeding such amount as the Board may establish by regulation.

[(4)] *(6)* A member bank may make extensions of credit not otherwise specifically authorized under this subsection to any executive officer of the bank in an amount prescribed in a regulation of the member bank's appropriate Federal banking agency.

[(5)] *(7)* Except to the extent permitted under paragraph [(4)] *(6)*, a member bank may not extend credit to a partnership in which one or more of its executive officers are partners having either individually or together a majority interest. For the purposes of paragraph [(4)] *(6)*, the full amount of any credit so extended shall be considered to have been extended to each officer of the bank who is a member of the partnership.

[(6) Whenever an executive officer of a member bank becomes indebted to any bank or banks (other than the one of which he is an officer) on account of extensions of credit of any one of the three categories respectively referred to in paragraphs (2), (3) and (4) in an aggregate amount greater than the aggregate amount of credit of the same category that could lawfully be extended to him by the bank, he shall make a written report to the board of directors of the bank, stating the date and amount of each such extension of credit, the security therefor, and the purposes for which the proceeds have been or are to be used.]

[(7)] *(8)* This subsection does not prohibit any executive officer of a member bank from endorsing or guaranteeing for the protection of the bank any loan or other asset previously acquired by the bank in good faith or from incurring any indebtedness to the bank for the purpose of protecting the bank against loss or giving financial assistance to it.

[(8)] *(9)* Each day that any extension of credit in violation of this subsection exists is a continuation of the violation for the purposes of section 8 of the Federal Deposit Insurance Act.

[(9) Each member bank shall include with (but not as part of) each report of condition and copy thereof filed under section 7(a)(3) of the Federal Deposit Insurance Act a report of all loans under authority of this subsection made by the bank since its previous report of condition.]

(10) The Board of Governors of the Federal Reserve System may prescribe such rules and regulations, including definitions of terms,

as it deems necessary to effectuate the purposes and to prevent evasions of this subsection. (12 U.S.C. 375a).

(h) EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS.—

(1) * * *

[(2) PREFERENTIAL TERMS PROHIBITED.—A member bank] *(2) PREFERENTIAL TERMS PROHIBITED.—*

(A) IN GENERAL.—A member bank may extend credit to its executive officers, directors, or principal shareholders, or to any related interest of such a person, only if the extension of credit—

[(A)] *(i)* is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank;

[(B)] *(ii)* does not involve more than the normal risk of repayment or present other unfavorable features; and

[(C)] *(iii)* the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank.

(B) EXCEPTION.—No provision of this paragraph shall be construed as prohibiting extensions of credit that constitute a benefit or compensation program that is widely available to and used by employees of the member bank, including employees who are not executive officers of the bank.

* * * * * * *

(8) EXECUTIVE OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER OF CERTAIN AFFILIATES TREATED AS EXECUTIVE OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER OF MEMBER BANK.—

(A) * * *

[(B) EXCEPTION.—The Board may, by regulation, make exceptions to subparagraph (A), except as that subparagraph makes applicable paragraph (2), for an executive officer or director of a subsidiary of a company that controls the member bank, if that executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank.]

(B) EXCEPTION.—The Board may, by regulation, make exceptions to subparagraph (A) for an executive officer or director of a subsidiary of a company that controls the member bank if—

(i) the executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank; and

(ii) the assets of such subsidiary do not exceed 10 percent of the consolidated assets of a company that

controls the member bank and such subsidiary (and is not controlled by any other company).

* * * * * * *

(10) BOARD'S RULEMAKING AUTHORITY.—The Board of Governors of the Federal Reserve System may prescribe such regulations, including definitions of terms, as it determines to be necessary to effectuate the purposes and prevent evasions of this subsection. *The Board shall specify by regulation the recordkeeping required of member banks to ensure compliance with this section.*

* * * * * * *

SEC. 24A. Hereafter no national bank, without the approval of the Comptroller of the Currency, and no State member bank, without the approval of the Board of Governors of the Federal Reserve System, shall (1) invest in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank or (2) make loans to or upon the security of the stock of any such corporation, if the aggregate of all such investments and loans, together with the amount of any indebtedness incurred by any such corporation which is an affiliate of the bank, as defined in section 2 of the Banking Act of 1933, as amended, will exceed the amount of the capital stock of such bank *or, in the case of a bank which received a composite CAMEL rating of "1" or "2" under the Uniform Financial Institutions Rating System (or an equivalent rating under a comparable rating system) as of its most recent examination and, both before and immediately following the investment or loan, is well capitalized (as defined under section 38 of the Federal Deposit Insurance Act), the amount which is equal to 150 percent of the capital stock and surplus of such bank.*

* * * * * * *

BANKING CORPORATIONS AUTHORIZED TO DO FOREIGN BANKING BUSINESS

SEC. 25A. Corporations to be organized for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions as provided by this section, and to act when required by the Secretary of the Treasury as fiscal agents of the United States, may be formed by any number of natural persons, not less in any case than five: *Provided*, That nothing in this section shall be construed to deny the right of the Secretary of the Treasury to use any corporation organized under this section as depositaries in Panama and the Panama Canal Zone, or in the Philippine Islands and other insular possessions and dependencies of the United States.

* * * * * * *

No corporation shall be organized under the provisions of this section with a capital stock of less than $2,000,000, one-quarter of

which must be paid in before the corporation may be authorized to begin business, and the remainder of the capital stock of such corporation shall be paid in installments of at least 10 per centum on the whole amount to which the corporation shall be limited as frequently as one installment at the end of each succeeding two months from the time of the commencement of its business operations until the whole of the capital stock shall be paid in: *Provided, however,* That whenever $2,000,000 of the capital stock of any corporation is paid in the remainder of the corporation's capital stock or any unpaid part of such remainder may, with the consent of the Board of Governors of the Federal Reserve System and subject to such regulations and conditions as it may prescribe, be paid in upon call from the board of directors; such unpaid subscriptions, however, to be included in the maximum of 10 per centum of the national bank's capital and surplus which a national bank is permitted under the provisions of this Act to hold in stock of corporations engaged in business of the kind described in this section and in section 25 of the Federal Reserve Act as amended. The capital stock of any such corporation may be increased at any time, with the approval of the Board of Governors of the Federal Reserve System, by a vote of two-thirds of its shareholders or by unanimous consent in writing of the shareholders without a meeting and without a formal vote, but any such increase of capital shall be fully paid in within ninety days after such approval; and may be reduced in like manner, provided that in no event shall it be less than $2,000,000. No corporation, except as herein provided, shall during the time it shall continue its operations, withdraw or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. **[**Any national banking association may invest in the stock of any corporation organized under the provisions of this section, but the aggregate amount of stock held in all corporations engaged in business of the kind described in this section and in section 25 of the Federal Reserve Act as amended shall not exceed 10 per centum of the subscribing bank's capital and surplus.**]** *Any national bank may invest in the stock of any corporation organized under this section. The aggregate amount of stock held by any national bank in all corporations engaged in business of the kind described in this section or section 25 shall not exceed an amount equal to 10 percent of the capital and surplus of such bank unless the Board determines that the investment of an additional amount by the bank would not be unsafe or unsound and, in any case, shall not exceed an amount equal to 25 percent of the capital and surplus of such bank.*

* * * * * * *

SECTION 107 OF THE FEDERAL CREDIT UNION ACT

POWERS

SEC. 107. A Federal credit union shall have succession in its corporate name during its existence and shall have power—

(1) * * *

* * * * * * *

(5) to make loans, the maturities of which shall not exceed twelve years except as otherwise provided herein, and extend lines of credit to its members, to other credit unions, and to credit union organizations and to participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) Loans to members shall be made in conformity with criteria established by the board of directors: *Provided,* That—

(i) * * *

* * * * * * *

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds [$10,000] *$50,000* plus pledged shares, be approved by the board of directors;

(v) loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser be approved by the board of directors when such loans standing alone or when added to any outstanding loan or loans of the guarantor or endorser exceeds [$10,000] *$50,000*;

* * * * * * *

DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT

SEC. 203. *(a) PROHIBITIONS.*—A management official of a depository institution or a depository holding company may not serve as a management official of any other depository institution or depository holding company not affiliated therewith if an office of one of the institutions or any depository institution that is an affiliate of such institutions is located within either—

(1) the same primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget, except in the case of depository institutions with less than $20,000,000 in assets in which case the provision of paragraph (2) shall apply, as that in which an office of the other institution or any depository institution that is an affiliate of such institution is located, or

(2) the same city, town, or village as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or in any city, town, or village contiguous or adjacent thereto.

(b) SMALL MARKET SHARE EXEMPTION.—

(1) IN GENERAL.—This section shall not be construed as prohibiting a management official of a depository institution or depository holding company from serving as a management official of another depository institution or depository holding company not affiliated with such institution or holding company if

the depository institutions or depository holding companies with which the management official serves hold, together with all the affiliates of such institutions or holding companies, in the aggregate no more that 20 percent of the deposits in each relevant geographic banking market where offices of the depository institutions or depository holding companies or their affiliates are located.

(2) RELEVANT GEOGRAPHIC BANKING MARKET DEFINED.—For purposes of paragraph (1), the term "relevant geographic banking market" means—

(A) the area defined by the boundaries identified by the Board of Governors of the Federal Reserve System;

(B) if the Board has not defined such boundaries, the area defined by the boundaries of the Ranally Metropolitan Area in which the office of the depository institution or the depository institution holding company is located; and

(C) if the office of such institution or company is not located within a Ranally Metropolitan Area, the area defined by the county (or an equivalent area of general local government) in which such office is located.

[SEC. 204. If a depository institution or a depository holding company has total assets exceeding $1,000,000,000, a management official of such institution or any affiliate thereof may not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding $500,000,000 or as a management official of any affiliate of such other institution.]

SEC. 204. DUAL SERVICE AMONG LARGER ORGANIZATIONS.

(a) IN GENERAL.—If a depository institution, depository institution holding company, or depository institution affiliate of any such institution or company has total assets exceeding $2,500,000,000, a management official of such institution, company, or affiliate may not serve as a management official of any other depository institution, depository institution holding company, or depository institution affiliate of any such institution or company which—

(1) is not an affiliate of the institution, company, or affiliate of which such person is a management official; and

(2) has total assets exceeding $1,500,000,000.

(b) CPI ADJUSTMENTS.—The dollar amounts in this section shall be adjusted annually after December 31, 1994, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

* * * * * * *

SEC. 206. (a) A person whose service in a position as a management official began prior to the date of enactment of this title and who was not immediately prior to the date of enactment of this title in violation of section 8 of the Clayton Act is not prohibited by section 203 or section 204 of this title from continuing to serve in that position [for a period of, subject to the requirements of subsection (c), 20 years after the date of enactment of this title]. The appropriate Federal depository institutions regulatory agency may provide a reasonable period of time for compliance with this title,

not exceeding fifteen months, after any change in circumstances which makes service described in the preceding sentence prohibited by this title, except that a merger, acquisition, increase in total assets, establishment of one or more offices, or change in management responsibilities shall not constitute changes in circumstances which would make such service prohibited by section 203 or section 204 of this title.

(b) Effective on the date of enactment of this title, a person who serves as a management official of a company which is not a depository institution or a depository holding company and as a management official of that depository institution or depository holding company as a result of that company which is not a depository institution or depository holding company becoming a diversified savings and loan holding company as that term is defined in section 408(a) of the National Housing Act. [This subsection shall expire, subject to the requirements of subsection (c), 20 years after the date of enactment of this title.

[(c) REVIEW OF EXISTING MANAGEMENT INTERLOCKS.—Upon the timely filing of a submission by a person petitioning to serve as a management official in more than 1 position pursuant to subsection (a) or (b), each appropriate Federal depository institutions regulatory agency shall, not later than 6 months after the date of enactment of this Act—

[(1) review, on a case-by-case basis, the circumstances under which such person has served as a management official under the provisions of subsection (a) or (b); and

[(2) permit the management official to continue to serve in such position only if—

[(A) such person has provided a resolution from the boards of directors of each affected depository institution, depository holding company, or company described in subsection (b), certifying to the appropriate Federal depository institutions regulatory agency for each of the institutions involved that there is no other qualified candidate from the community described in paragraph (1) or (2) of section 203 who—

[(i) possesses the level of expertise necessary for such service with respect to the affected depository institution, depository holding company, or company described in subsection (b); and

[(ii) is willing to serve as a management official at the affected depository institution, depository holding company, or company described in subsection (b); and

[(B) the appropriate Federal depository institutions regulatory agency determines that continuation of service by the management official does not produce an anticompetitive effect with respect to each affected depository institution, depository holding company, or company described in subsection (b).]

* * * * * * *

SEC. 209. [(a) IN GENERAL.—] Rules and regulations to carry out this title, *including rules or regulations which permit service by a management official which would otherwise be prohibited by section 203 or section 204*, may be prescribed by—

(1) * * *

* * * * * * *

[(b) REGULATORY STANDARDS.—An appropriate Federal depository institution regulatory agency may permit, on a case-by-case basis, service by a management official which would otherwise be prohibited by section 203 or 204 only if—

[(1) the board of directors of the affected depository institution, depository institution holding company, or company described in section 206(b), provides a resolution to the appropriate Federal depository institutions regulatory agency certifying that there is no other candidate from the community described in paragraph (1) or (2) of section 203 who—

[(A) possesses the level of expertise necessary for such service with respect to the affected depository institution, depository institution holding company, or company described in section 206(b) and is not prohibited from service under section 203 or 204; and

[(B) is willing to serve as a management official at the affected depository institution, depository institution holding company, or company described in section 206(b); and

[(2) the appropriate Federal depository institutions regulatory agency determines that—

[(A) the management official is critical to the safe and sound operations of the affected depository institution, depository institution holding company, or company described in section 206(b);

[(B) continuation of service by the management official does not produce an anticompetitive effect with respect to the affected depository institution, depository institution holding company, or company described in section 206(b); and

[(C) the management official meets such additional requirements as the agency may impose.

[(c) LIMITED EXCEPTION FOR MANAGEMENT OFFICIAL CONSIGNMENT PROGRAM.—

[(1) IN GENERAL.—Notwithstanding the requirements of subsection (b), an appropriate Federal depository institutions regulatory agency may establish a program to permit, on a case-by-case basis, service by a management official which would otherwise be prohibited by section 203 or 204, for a period of not more than 2 years, if the agency determines that such service would—

[(A) improve the provision of credit to low- and moderate-income areas;

[(B) increase the competitive position of minority- and woman-owned institutions; or

[(C) strengthen the management of newly chartered institutions that are in an unsafe or unsound condition.

[(2) EXTENSION OF SERVICE PERIOD.—The appropriate Federal depository institutions regulatory agency may extend the 2-year period referred to in paragraph (1) for one additional period of not more than 2 years, subject to making a new deter-

mination described in subparagraphs (A) through (C) of paragraph (1).]

* * * * * * *

SECTION 106 OF THE BANK HOLDING COMPANY ACT AMENDMENTS OF 1970

SEC. 106. (a) * * *
(b)(1) * * *
(2)(A) * * *

* * * * * * *

[(G)(i) Each executive officer and each stockholder of record who directly or indirectly owns, controls, or has the power to vote more than 10 per centum of any class of voting securities of an insured bank shall make a written report to the board of directors of such bank for any year during which such executive officer or shareholder has outstanding an extension of credit from a bank which maintains a corresponding account in the name of such bank. Such report shall include the following information:

[(1) the maximum amount of indebtedness to the bank maintaining the correspondent account during such year of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder, or which is controlled by such executive officer or stockholder;

[(2) the amount of indebtedness to the bank maintaining the correspondent account outstanding as of a date not more than ten days prior to the date of filing of such report of (a) such executive officer or stockholder of record, (b) each company controlled by such executive officer or stockholder, or (c) each political or campaign committee the funds or services of which will benefit such executive officer or stockholder;

[(3) the range of interest rates charged on such indebtedness of such executive officer or stockholder of record; and

[(4) the terms and conditions of such indebtedness of such executive officer or stockholder of record.

[(ii) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by any bank or executive officer or principal shareholder thereof concerning any extension of credit by a correspondent bank to the reporting bank's executive officers or principal shareholders, or the related interests of such persons.]

[(H) (*G*) For the purpose of this paragraph—

[(i) the term "bank" includes a mutual savings bank, a savings bank, and a savings association (as those terms are defined in section 3 of the Federal Deposit Insurance Act);

(ii) the term "related interests of such persons" includes any company controlled by such executive officer, director, or person, or nay political or campaign committee the funds or services of which will benefit such executive officer, director, or

person or which is controlled by such executive officer, director, or person; and

(iii) the terms "control of a company" and "company" have the same meaning as under section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).

[(I)] (*H*) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (within the meaning of section 3(u) of the Federal Deposit Insurance Act) with respect to such a bank (including a separation caused by the closing of such a bank) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this section against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such bank (whether such date occurs before, on, or after the date of the enactment of this subparagraph).

* * * * * * *

SECTION 1115 OF THE RIGHT TO FINANCIAL PRIVACY ACT

COST REIMBURSEMENT

SEC. 1115. (a) Except for records obtained pursuant to section 1103(d) or 1113 (a) through (h), or as otherwise provided by law, a Government authority shall pay to the financial institution assembling or providing financial records pertaining to a customer *(including corporate customers)* and in accordance with procedures established by this title a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required or requested to be produced. The Board of Governors of the Federal Reserve System shall, by regulation, establish the rates and conditions under which such payment may be made.

(b) This section shall take effect on October 1, 1979.

CHAPTER 53 OF TITLE 31, UNITED STATES CODE

CHAPTER 53—MONETARY TRANSACTIONS

* * * * * * *

SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

5311. Declaration of purpose.

* * * * * * *

[5327. Identification of financial institutions.]
5327. Identification of foreign nonbank financial institutions.

* * * * * * *

§ 5327. Identification of *foreign nonbank* financial institutions

(a) REGULATIONS REQUIRED.—The Secretary of the Treasury shall prescribe regulations requiring each depository institution to identify any customer (of the depository institution) which—

[(1) is a financial institution described in—

[(A) any subparagraph of section 5312(a)(2) other than subparagraphs (A) through (G); or

[(B) any regulation under any such subparagraph; and]

(1) is a financial institution (other than a foreign bank (as defined in section 101(b) of the International Banking Act of 1978)) which is a foreign person; and

* * * * * * *

SECTION 905 OF THE INTERNATIONAL LENDING SUPERVISION ACT OF 1983

RESERVES

SEC. 905. (a)(1) Each appropriate Federal banking agency [shall] *may* require a banking institution to establish and maintain a special reserve whenever, in the judgment of such appropriate Federal banking agency—

(A) the quality of such banking institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as—

(i) a failure by such public or private borrowers to make full interest payments on external indebtedness;

(ii) a failure to comply with the terms of any restructured indebtedness; or

(iii) a failure by the foreign country to comply with any International Monetary Fund or other suitable adjustment program; or

(B) no definite prospects exist for the orderly restoration of debt service.

* * * * * * *

(b) The appropriate Federal banking agencies [shall] *may* analyze the results of foreign loan rescheduling negotiations, assess the loan loss risk reflected in rescheduling agreements, and, using the powers set forth in section 908 (regarding capital adequacy), ensure that the capital and reserve positions of United States banks are adequate to accommodate potential losses on their foreign loans.

* * * * * * *

SECTION 7 OF THE INTERNATIONAL BANKING ACT OF 1978

AUTHORITY OF FEDERAL RESERVE SYSTEM

SEC. 7. (a) * * *

* * * * * * *

(c)

(1) EXAMINATION OF BRANCHES, AGENCIES, AND AFFILIATES.—

(A) IN GENERAL.—The Board may examine each branch or agency of a foreign bank, each commercial lending company or bank controlled by 1 or more foreign banks or 1 or more foreign companies that control a foreign bank, and other office or affiliate of a foreign bank conducting business in any State.

(B) COORDINATION OF EXAMINATIONS.—

(i) IN GENERAL.—The Board shall coordinate examinations under this paragraph with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and appropriate State bank supervisors to the extent such coordination is possible.

(ii) SIMULTANEOUS EXAMINATIONS.—The Board may request simultaneous examinations of each office of a foreign bank and each affiliate of such bank operating in the United States.

(iii) AVOIDANCE OF DUPLICATION.—In exercising its authority under this paragraph, the Board shall take all reasonable measures to reduce burden and avoid unnecessary duplication of examinations.

[(C) ANNUAL ON-SITE EXAMINATION.—Each branch or agency of a foreign bank shall be examined at least once during each 12-month period (beginning on the date the most recent examination of such branch or agency ended) in an on-site examination.

[(D) COST OF EXAMINATIONS.—The cost of any examination under subparagraph (A) shall be assessed against and collected from the foreign bank or the foreign company that controls the foreign bank, as the case may be.]

(C) ON-SITE EXAMINATION.—Each Federal branch or agency, and each State branch or agency, of a foreign bank shall be subject to on-site examination by a Federal banking agency or State bank supervisor as frequently as would a national bank or State bank, respectively, by its appropriate Federal banking agency.

(D) COST OF EXAMINATIONS.—The cost of any examination undertaken pursuant to subparagraph (A) shall be assessed against and collected from the foreign bank or the foreign company that controls the foreign bank, as the case may be, but only to the same extent that fees are collected by the Board for examination of any State member insured bank.

(d) ESTABLISHMENT OF FOREIGN BANK OFFICES IN THE UNITED STATES.—

(1) PRIOR APPROVAL REQUIRED.—No foreign bank may establish a branch or an agency, or acquire ownership or control of a commercial lending company, without the prior approval of the Board.

(2) REQUIRED STANDARDS FOR APPROVAL.—[The] *Except as provided in paragraph (6), the* Board may not approve an application under paragraph (1) unless it determines that—

(A) the foreign bank engages directly in the business of banking outside of the United States and is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; and

(B) the foreign bank has furnished to the Board the information it needs to adequately assess the application.

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(5) ESTABLISHMENT OF CONDITIONS.—[Consistent with the standards for approval in paragraph (2), the] *The* Board may impose such conditions on its approval under this subsection as it deems necessary.

(6) EXCEPTION.—

(A) IN GENERAL.—If the Board is unable to find under paragraph (2) that a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, the Board may nevertheless approve an application under paragraph (1) by such foreign bank if—

(i) the appropriate authorities in the home country of such foreign bank are working to establish arrangements for the consolidated supervision of such bank; and

(ii) all other factors are consistent with approval.

(B) ADDITIONAL CONDITIONS.—The Board, after requesting and considering the views of the appropriate State bank supervisor or the Comptroller of the Currency, as the case may be, may impose such conditions or restrictions relating to activities or business operations of the proposed branch, agency, or commercial lending company subsidiary, including restrictions on sources of funding, as are considered appropriate in the public interest.

(C) MODIFICATION OF CONDITIONS.—Any condition or restriction imposed by the Board under this subsection in connection with the approval of an application may be varied or withdrawn where such modification is consistent with the public interest.

(7) TIME PERIOD FOR BOARD ACTION.—

(A) FINAL ACTION.—The Board shall take final action on any application under paragraph (1) within 180 days of receipt of the application, except that the Board may extend for 180 days the period within which to take final action on such application, after providing notice of, and the reasons for, the extension to the applicant foreign bank and any appropriate State bank supervisor or the Comptroller of the Currency, as the case may be.

(B) FAILURE TO SUBMIT INFORMATION.—The Board may deny any application if it has not received information requested from the applicant foreign bank or appropriate authorities in the home country in sufficient time to permit the Board to evaluate such information adequately within the time periods for final action set forth in subparagraph (A).

(C) WAIVER.—A foreign bank may waive the applicability of subparagraph (A) with respect to any such application.

(e) TERMINATION OF FOREIGN BANK OFFICES IN THE UNITED STATES.—

(1) STANDARDS FOR TERMINATION.—The Board, after notice and opportunity for hearing and notice to any appropriate State bank supervisor *or the Comptroller of the Currency*, may order a foreign bank that operates a State branch or agency or commercial lending company subsidiary *or a Federal branch or agency* in the United States to terminate the activities of such branch, agency, or subsidiary if the Board finds that—

(A)*(i)* the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country; [or] *and*

(ii) the appropriate authorities in the home country are not making progress in establishing arrangements for the comprehensive supervision or regulation of such foreign bank on a consolidated basis; or

(B)(i) there is reasonable cause to believe that such foreign bank, or any affiliate of such foreign bank, has committed a violation of law or engaged in an unsafe or unsound banking practice in the United States; and

(ii) as a result of such violation or practice, the continued operation of the foreign bank's branch, agency or commercial lending company subsidiary in the United States would not be consistent with the public interest or with the purposes of this Act, the Bank Holding Company Act of 1956, or the Federal Deposit Insurance Act.

However, in making findings under this paragraph, the Board shall not make size the sole determinant factor, and may take into account the needs of the community as well as the length of operation of the foreign bank and its relative size in its home country. Nothing in this paragraph shall affect the ability of the Board to order a State branch, agency, or commercial lending company subsidiary *or a Federal branch or agency* to terminate its activities in the United States pursuant to any standard set forth in this Act.

* * * * * * *

[(5) RECOMMENDATION TO AGENCY FOR TERMINATION OF A FEDERAL BRANCH OR AGENCY.—The Board may transmit to the Comptroller of the Currency a recommendation that the license of any Federal branch or Federal agency of a foreign bank be terminated in accordance with section 4(i) if the Board has reasonable cause to believe that such foreign bank or any affiliate of such foreign bank has engaged in conduct for which the activities of any State branch or agency may be terminated under paragraph (1).]

[(6)] *(5)* ENFORCEMENT OF ORDERS.—

(A) IN GENERAL.—In the case of contumacy of any office or subsidiary of the foreign bank against which—

(i) the Board has issued an order under paragraph (1); or

(ii) the Comptroller of the Currency has issued an order under section 4(i),

or a refusal by such office or subsidiary to comply with such order, the Board or the Comptroller of the Currency may invoke the aid of the district court of the United States within the jurisdiction of which the office or subsidiary is located.

(B) COURT ORDER.—Any court referred to in subparagraph (A) may issue an order requiring compliance with an order referred to in subparagraph (A).

[(7)] *(6)* CRITERIA RELATING TO FOREIGN SUPERVISION.—Not later than 1 year after the date of enactment of this subsection, the Board, in consultation with the Secretary of the Treasury, shall develop and publish criteria to be used in evaluating the operation of any foreign bank in the United States that the Board has determined is not subject to comprehensive supervision or regulation on a consolidated basis. In developing such criteria, the Board shall allow reasonable opportunity for public review and comment.

* * * * * * *

SECTION 1306 OF TITLE 18, UNITED STATES CODE

§ 1306. Participation by financial institutions

Whoever knowingly violates section [5136A] *5136C* of the Revised Statutes of the United States, section 9A of the Federal Reserve Act, or section 20 of the Federal Deposit Insurance Act shall be fined under this title or imprisoned not more than one year, or both.

BANK SERVICE CORPORATION ACT

SHORT TITLE AND DEFINITIONS

SECTION 1. [(a) This Act may be cited as the "Bank Service Corporation Act".]

(a) SHORT TITLE.—This Act may be cited as the "Bank Service Company Act".

(b) For the purpose of this Act—

(1) the term "appropriate Federal banking agency" shall have the meaning provided in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q));

[(2) the term "bank service corporation" means a corporation organized to perform services authorized by this Act, all of the capital stock of which is owned by one or more insured banks;]

(2) the term "bank service company" means—

(A) any corporation—

(i) which is organized to perform services authorized by this Act; and

(ii) all of the capital stock of which is owned by 1 or more insured banks; and

(B) any limited liability company—

(i) which is organized to perform services authorized by this Act; and

(ii) all of the members of which are 1 or more insured banks.

* * * * * * *

(6) the term "invest" includes any advance of funds to a bank service [corporation] *company*, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment; [and]

(7) the term "limited liability company" means any company organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) which provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely by reason of being, or acting as, a member or manager of such company; and

[(7)] *(8)* the term "principal investor" means the insured bank that has the largest dollar amount invested in the [capital stock] *equity* of a bank service [corporation] *company*. In any case where two or more insured banks have equal dollar amounts invested in a bank service [corporation] *company*, the [corporation] *company* shall, prior to commencing operations, select one of the insured banks as its principal investor and shall notify the bank's appropriate Federal banking agency of that choice within 5 business days of its selection.

AMOUNT OF INVESTMENT IN BANK SERVICE [CORPORATION] *COMPANY*

SEC. 2. Notwithstanding any limitation or prohibition otherwise imposed by any provision of law exclusively relating to banks, an insured bank may invest not more than 10 per centum of paid-in and unimpaired capital and unimpaired surplus in a bank service [corporation] *company*. No insured bank shall invest more than 5 per centum of its total assets in bank service [corporation] *companies*.

PERMISSIBLE BANK SERVICE [CORPORATION] *COMPANY* ACTIVITIES FOR DEPOSITORY INSTITUTIONS

SEC. 3. Without regard to the provisions of sections 4 and 5 of this Act, an insured bank may invest in a bank service [corporation] *company* that performs, and a bank service [corporation] *company* may perform, the following services only for depository institutions: check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a depository institution.

PERMISSIBLE BANK SERVICE [CORPORATION] *COMPANY* ACTIVITIES FOR OTHER PERSONS

SEC. 4. (a) A bank service [corporation] *company* may provide to any person any service authorized by this section, except that a bank service [corporation] *company* shall not take deposits.

(b) Except with the prior approval of the Board under section 5(b) of this Act in accordance with subsection (f) of this section—

(1) a bank service [corporation] *company* shall not perform the services authorized by this section in any State other than that State in which its shareholders *or members* are located; and

(2) all insured bank shareholders *or members* of a bank service [corporation] *company* shall be located in the same State.

(c) A bank service [corporation] *company* in which a State bank is a shareholder *or member* shall perform only those services that such State bank shareholder *or member* is authorized to perform under the law of the State in which such State bank operates and shall perform such services only at locations in the State in which such State bank shareholder *or member* could be authorized to perform such services.

(d) A bank service [corporation] *company* in which a national bank is a shareholder *or member* shall perform only those services that such national bank shareholder *or member* is authorized to perform under the law of the United States and shall perform such services only at locations in the State at which such national bank shareholder *or member* could be authorized to perform such services.

(e) A bank service [corporation] *company* that has both national bank and State bank shareholders *or members* shall perform only those services that may lawfully be performed by both [its national bank shareholder or shareholders] *any shareholder or member of the company which is a national bank* under the law of the United States and [its State bank shareholder or shareholders] *any shareholder or member of the company which is a State bank* under the law of the State in which [such State bank or banks] *any such State bank* operate and shall perform such services only at location in the State at which both its State bank and national bank shareholders *or members* could be authorized to perform such services.

(f) Notwithstanding the other provisions of this section or any other provision of law, other than the provisions of Federal and State branching law regulating the geographic location of banks to the extent that those laws are applicable to an activity authorized by this subsection, a bank service [corporation] *company* may perform at any geographic location any service, other than deposit taking *company*, that the Board has determined, by regulation, to be permissible for a bank holding company under section 4(c)(8) of the Bank Holding Company Act.

PRIOR APPROVAL FOR INVESTMENTS IN BANK SERVICE [CORPORATIONS] *COMPANIES*

SEC. 5. (a) No insured bank shall invest in the capital stock of a bank service [corporation] *company* that performs any service under authority of subsection (c), (d), or (e) of section 4 of this Act

without prior notice, as determined by the bank's appropriate Federal banking agency.

(b) No insured bank shall invest in the capital stock of a bank service [corporation] *company* that performs any service under authority of section 4(f) of this Act and no bank service [corporation] *company* shall perform any activity under section 4(f) of this Act without the prior approval of the Board.

(c) In determining whether to approve or deny any application for prior approval or whether to approve or disapprove any notice under this section, the Board or the appropriate Federal banking agency, as the case may be, is authorized to consider the financial and managerial resources and future prospects of the bank or banks and bank service [corporation] *company* involved, including the financial capability of the bank to make a proposed investment under this Act, and possible adverse effects such as undue concentration of resources, unfair or decreased competition, conflicts of interest, or unsafe or unsound banking practices.

(d) In the event the Board or the appropriate Federal banking agency, as the case may be, fails to act on any application under this section within ninety days of the submission of a complete application to the agency, the application shall be deemed approved.

SERVICES TO NONSTOCKHOLDERS *OR NONMEMBERS*

SEC. 6. No bank service [corporation] *company* shall unreasonably discriminate in the provision of any services authorized under this Act to any depository institution that does not own stock in *or is not a member of* the service [corporation] *company* on the basis of the fact that [the nonstockholding institution] *such depository institution* is in competition with an institution that owns stock in *or is a member of* the bank service [corporation] *company*, except that—

(1) it shall not be considered unreasonable discrimination for a bank service [corporation] *company* to provide services to a nonstockholding *or nonmember* institution only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; and

(2) a bank service [corporation] *company* may refuse to provide services to a nonstockholding *or nonmember* institution if comparable services are available from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the service [corporation] *company*.

REGULATION AND EXAMINATION OF BANK SERVICE [CORPORATION] *COMPANIES*

SEC. 7. (a) A bank service [corporation] *company* shall be subject to examination and regulation by the appropriate Federal banking agency of its principal investor to the same extent as its principal investor. The appropriate Federal banking agency of the principal shareholder *or principal member* of such a bank service [corporation] *company* may authorize any other Federal banking agency that supervises any other shareholder *or member* of the bank service [corporation] *company* to make such an examination.

(b) A bank service [corporation] *company* shall be subject to the provisions of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) as if the bank service [corporation] *company* were an insured bank. For this purpose, the appropriate Federal banking agency shall be the appropriate Federal banking agency of the principal investor of the bank service [corporation] *company*.

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MINORITY VIEWS TO H.R. 1858

The Democratic and Independent Members of the Committee on Banking and Financial Services voted unanimously to oppose the Financial Institutions Regulatory Relief Act of 1995. We oppose this ill-conceived bill because it poses a danger to the safety and soundness of the nation's banking industry, eviscerates well proven community development law, and seriously compromises many consumer safeguards.

H.R. 1362 (the precursor of H.R. 1858) as introduced, was a grab bag and was overreaching in responding to special interests and lobbyists. This bill follows a new trend of legislating by anecdote, not fact, as the Committee received no documentation of costs supposedly borne by banks because of their community or consumer obligations imposed by law. In fact, many of the provisions in the bill were rejected in the last Congress because they were unjustified, they gutted consumer protection laws and they compromised the safe and sound operation of our banks. Nonetheless, the bill, H.R. 1362, actually was made even worse during the Subcommittee markup by Republican amendments. As a result of these amendments, important civil rights laws were hobbled; community development laws were further eroded; and directors and officers who in the past pillaged their institutions would be sheltered in the future from liability.

Because these amendments were so damaging, to the point of embarrassing our colleagues, a number were either pared back or dropped altogether in the full Committee deliberations. Far from "accommodating" the concerns of the minority, as suggested by the Chairman, these amendments and other provisions in the bill were voted down because they are simply bad policy. Although the full Committee markup improved the bill in several areas, the community reinvestment provisions were made dramatically worse—so much so that there remains no enforcement mechanism for the gutted CRA law.

As a result, the bill has justly earned the distinction of becoming a veto target. In fact, following the Committee's action, Secretary of the Treasury Robert Rubin wrote to inform Chairman Leach that he would recommend that the President veto the bill in its current form.

We, Democratic and Independent Members, fully, support reasonable efforts to streamline government regulations, but cannot support this extreme and radical legislation. As the Vento substitute illustrates, it is possible to achieve more efficient regulation without putting communities, consumers and the deposit insurance funds at risk.

I. EROSION OF BANKS' AND THRIFTS' COMMITMENT TO SERVING THEIR COMMUNITIES

A. Gutting of CRA

We are extremely disappointed and alarmed by the Committee's action in systematically dismantling the Community Reinvestment Act ("CRA"). Because of a series of Republican amendments, CRA, a law that has been responsible for the flow of more than $30 billion (and by some estimates over $60 billion) to urban and rural communities across the country has been crippled. CRA, a law that simply requires banks and thrifts to make credit available to the communities they are chartered to serve, has been unjustly demonized by the Republicans on the Committee. One of our Republican colleagues went so far as to refer to CRA as "a bunch of crap." This attitude and the actions of the Republicans demonstrate a complete insensitivity to or lack of understanding of the inability of low and moderate income Americans to obtain credit in our society.

CRA has been a law that has made credit accessible for hundreds of thousands of low- and moderate-income Americans. CRA is not a civil rights law nor an affirmative action measure, but rather, a law that requires institutions chartered and insured by the federal government to lend within all the communities they are chartered to serve. And, CRA expressly states that serving the credit needs of local communities is to be consistent with the safe and sound operations of institutions.

In fact, CRA has not been found to jeopardize the safety and soundness of institutions, nor the underlying backstop of federal deposit insurance. Federal Reserve Board Governor Lawrence Lindsey, in a response to Representative Frank, referred to a few of the studies analyzing CRA loan performance. Regarding one such study by the Woodstock institute in 1993, Governor Lindsey wrote: "the combined delinquency and foreclosure rates for multifamily housing loans in low- and moderate-income areas were slightly superior to those gleaned from national samples reflecting loans in all income area." Governor Lindsey also asserted that anecdotal information has shown that "loans to low- and moderate-income people perform with respect to repayment as well as, and in some cases better than, loans to others. Furthermore, I have heard of no cases in which a bank's portfolio contained such a large number of such loans that even if a significant number of the borrowers defaulted, it would put the bank in a seriously adverse safety and soundness position."

President Clinton and the banking regulators are to be lauded for their two year efforts to reform CRA regulations. They have produced regulations which emphasize performance over paperwork. Banks and thrifts will be judged by the loans, investments, and services they provide to their communities—not by the quality of their documentation. Small banks would receive streamlined examinations and will have no reporting requirements under CRA. Yet, despite being hailed by both the banking industry and community groups, these regulations will not even have the opportunity to go into effect if this bill ever becomes law.

Because of the Republican actions in Committee, institutions with $100 million or less in assets will be exempt from CRA cov-

erage altogether. Institutions with $250 million or less in assets will be able to "self certify" their compliance with the law. These two provisions would effectively exempt close to 90% percent of banks and thrifts from CRA coverage. Furthermore, institutions with CRA ratings of satisfactory or above—95% of the industry—will be deemed to have satisfied their CRA obligations until their next examination. And, the most egregious vote by the Republicans was to eliminate the sole enforcement mechanism in CRA—the obligation of the regulators to take into account an institution's record of meeting its community credit needs when considering an institution's application to branch, acquire, or merge with another bank or thrift.

The Republicans have effectively reduced CRA to a hollow hope; a shadow of its former self. They have hobbled a law that has successfully channeled billions of dollars to urban and rural communities. At a time when public funds for such communities are getting scarcer, private dollars are essential to the economic vitality of these neighborhoods.

The Republican attack on the Community Reinvestment Act is one of the major reasons cited by Secretary Rubin in a letter to Chairman Leach advising that he would recommend to the President that this regulatory bill be vetoed in its current form.

B. Exemption of over 3,000 institutions from HMDA

By increasing the statutory exemption from the Home Mortgage Disclosure Act ("HMDA") for institutions with $10 million in assets or less, to those with $50 million in assets or less, section 116 will exempt more than 3,000 additional lenders from the law's coverage. Although purported to adjust the exemption for inflation, this provision more than doubles the actual CPI adjusted dollar figure from 1975. Furthermore, it is unclear how many more institutions (with *over* $50 million in assets) will be exempt from HMDA under the new grant of discretion to the Federal Reserve Board. The bill permits the Board to exempt any other lender from complying with HMDA because the law is too burdensome. There is simply no justification for granting this exemptive authority to the Board which will create a gaping loophole in the law.

HMDA imposes no more obligation on financial institutions than to report their loan data. But this data has proven to be critical in revealing discrepancies between lending to minorities and non-minority applicants. HMDA has put both lenders and the public on notice about the fairness of individual institutions' lending practices.

Disclosures under HMDA are important for purposes of monitoring an institution's service to its community and its compliance with the fair lending laws. While HMDA data alone is not determinative of a fair lending violation, it is an essential investigative tool. Because of the utility of HMDA, both Secretary Cisneros and Acting Assistant Attorney General Kent Markus have written letters to Committee members strongly condemning this roll back of HMDA by the Committee.

C. Restoration of fair lending laws

We were successful in striking provisions adopted by the Subcommittee that seriously undermined our civil rights laws. The Subcommittee passed an amendment that would have stripped the Attorney General of the authority to initiate cases charging a ''pattern or practice'' of discrimination under the Fair Housing Act and the Equal Credit Opportunity Act. In a letter to Chairman Leach, Attorney General Reno wrote that to prohibit the Department of Justice from challenging pattern or practice cases would be ''unthinkable.'' Furthermore, the amendment would have disallowed the use of disparate impact theory in fair lending cases.

Yet, one of our Republican colleagues exhorted the Committee to ''rein in the whole idea of the blackmail opportunities that are here today when these suits are being brought on disparate impact, and courts of appeals are divided on this issue, and let's not go along with this kind of funny business anymore . . .''. We are offended that lawsuits to vindicate the rights of individuals who have been mistreated by financial institutions are equated with ''blackmail'' and ''funny business.''

Moreover, amendments to the Fair Housing Act are well outside of the Committee's jurisdiction and expertise. The far reaching amendment would have impeded lawsuits beyond the lending context and extended to such areas as realtor and rental practices, and housing discrimination against families with children. All this, without even one hearing on the topic.

Fortunately, the Committee recognized the potential and far-reaching damage that would have been done by these provisions and struck them from the bill.

II. A RETREAT FROM SAFETY AND SOUNDNESS

We also oppose this bill because it weakens measures designed to ensure the safe and sound operation of federally insured institutions. Without critical safeguards, the taxpayers stand to lose a lot. The recent savings and loan crisis should serve as a grave reminder of the dangers of irresponsible deregulation of an industry. We cannot support a bill that poses increased risk of loss to the deposit insurance funds and the taxpayers who guarantee that fund.

A. BCCI redux

The Republican majority on the Committee struck a positive amendment to section 223 by Congressman Kanjorski adopted at the Subcommittee. The Kanjorski amendment provided important safeguards necessary to help prevent another BCCI scandal. The provisions would have (1) required that boards of directors be comprised of a majority of outside directors; (2) prohibited lawyers and accountants who provide professional advice to the board of financial institutions over $250 million in size from serving on those boards of directors; and (3) required certain ownership disclosures to boards of directors. Those provisions are crucial to ensuring that a board of directors serve as an independent overseer of the financial institution. The independence of a board is best insured when a majority of the directors are outside directors. Furthermore, prohibiting such outside counsel and accountants from serving on the

board would prevent a clear conflict of interest from arising, as in the case of BCCI.

B. The wrong signal on insider lending

The amendments to current law contained in section 225 would effectively encourage the risky and unsafe practice of self-serving insider lending. A major cause of the failure of banks and thrifts over the past decade was their penchant for making exorbitant and risky loans to their own officers and directors. This unsafe practice was properly restricted in recent years. The Republican majority now seeks to seriously weaken those restrictions and the ability of the banking regulators to monitor and detect that conduct. This section contains major exceptions to the prohibition on insider lending and eliminates bank reports on such loans.

C. The chilling of Government investigations

Section 227, requiring the government to reimburse a financial institution for providing financial records on corporate customers pursuant to a government request, would have a chilling effect on major investigations and cost the taxpayers approximately thirty million dollars in the first year alone. In opposing this provision, the Justice Department has stated that: "Financial information about corporations is a critical component of some of the Government's most important investigations. For example, such information is often indispensable in defense procurement fraud and money laundering cases. . . . investigators and prosecutors with whom we spoke indicated that requiring reimbursement for corporate record requests could have chilling impact on investigations, particularly in a time of declining government resources."

D. Audit committees compromised

Section 233 of the bill repeals important bank audit requirements legislated in response to the egregious abuses of the thrift crisis. These requirements sought to ensure that insured depository institutions be subject to independent, objective and public financial audit procedures in a manner consistent with their fiduciary responsibilities and the safety and soundness of the banking system.

The bill would eviscerate nearly all of these requirements for well over 90% of the nation's banking institutions. For example, it repeals the requirement that the banks' boards of directors establish audit committees composed entirely of independent, outside directors. Thus, all but fewer than 10% of U.S. banks would be able to either abolish their audit committee altogether or appoint all insiders to the audit committee. Service of insiders on the audit committee presents a clear conflict of interest since those who manage the institution can hardly be expected to objectively audit or criticize its operations. Such an exception from the audit committee requirement, for instutitions which enjoy the benefits of federal deposit insurance, is a standard far below that for nearly all privately-owned, publicly-traded American corporations. And to make matters worse, this exception is absolute—banking regulators are given no discretion to require that even one member of the audit committee be an independent, outside director.

The bill also eliminates statutory requirements that a bank's independent accountants attest to the bank's compliance with safety and soundness laws. It also repeals the requirement that accountants report on, and attest to, the effectiveness of a bank's internal control polices and procedures, which are key to the institution's risk management and financial soundness. These attestation requirements are critical in maintaining the accountants' objectivity and providing essential information about the bank's condition. The bill would also permit banking regulators to designate certain aspects of the bank's audited financial reports as confidential and unavailable to the public. This patently undermines the fundamental principle of public accountability for federally insured banks and opens the door to concealment of basic financial information that all investors, depositors and taxpayers have the right to know.

E. Outside directors—Hear no evil, see no evil

Section 234 would exclude outside directors from the definition of "institution affiliated party" for purposes of various enforcement actions. They should thus be subject to an enforcement action only if an agency could prove that the outside director "knowingly" or "recklessly" participated in a violation of law or regulation. Currently, outside directors are subject to the same negligence standard as applies to other directors.

This amendment would harm corporate governance and create perverse incentives for outside directors to avoid learning about, or following up on, facts that could give raise to liability. As the Federal Deposit Insurance Corporation has stated in correspondence on the provision: "All directors of insured depository institutions, regardless of whether they are inside or outside directors, have a duty to set policies for their institutions and see that those policies are implemented and adhered to while meeting its community's needs on a safe and sound basis. Losses an insured depository institution can sustain as a result of negligent oversight are not determined by whether the negligent director is an insider or an outsider. The experience of the FDIC has shown that both inside and outside directors can engage in negligent conduct as well as abusive self-dealing transactions. We believe good corporate governance and effective regulatory oversight require that all directors know that they will be held responsible for fulfilling their duties to properly manage their institution. Put differently, telling outside directors that they can be negligent with impunity is definitely the wrong message."

These are only the most egregious examples of how this legislation would in many ways place our nation's insured depository institutions on unsafe and unsound footing, and thereby increase the risk that the taxpayers will once again be asked to pay for the excesses of an unregulated financial institutions industries. Fortunately, a very dangerous and costly section of the bill added by the Republicans at the Subcommittee was deleted at the full Committee by other Republicans who painfully recognized the harm it would cause. The provision would have established new rules governing the legal liability and standard of conduct for directors and officers of insured depository institutions. Those directors and officers of insured depository institutions. Those rules were roundly

opposed by the banking regulators as irresponsibly absolving directors and officers of any real duty to safely and soundly oversee an insured depository institution.

III. THE CONSUMER IS THE BIG LOSER

A. The Home Ownership and Equity Protection Act is substantially weakened

The bill effectively eliminates the important consumer protection of the Home Ownership and Equity Protection Act passed just last year, by limiting the Act's coverage to second mortgages. The Home Ownership and Equity Protection Act, which has not even been implemented, requires additional disclosures in the case of mortgages with interest rates more than 10 points above comparable Treasury securities or mortgages with fees that are more than the greater of 8 points or $400. The Act also prohibits certain particularly abusive terms in connection with these high cost mortgages, such as negative amortization, prepayment penalties and balloon payments within 5 years.

The law was enacted with bipartisan support and addresses unscrupulous lending practices. Congressional hearings documented abusive tactics employed by certain lenders whereby these lenders would target poor people with equity in their homes, oftentimes with credit problems, for home equity loans. The loans would be made for purposes of debt consolidation or home improvements, improvements which the homeowners were often convinced to undertake by the lender. Testimony from numerous sources, including the National Housing Law Project and AARP, indicated that, in the vast majority of cases lenders target homeowners who either own their homes outright or have very small payments remaining on their mortgages. Where mortgages do remain, the new lender pays off any existing balance in order to obtain the first lien. This is done both to ensure that the new lender gets the priority lien and because federal law prohibits interest rate regulation on first mortgages thus allowing the high rates to be charged.

Multiple fees are usually folded into the loan amounts, often without the knowledge of the borrower. In many cases, because of these fees, the proceeds to the homeowner amount to as little as one third of the loan amount. As a result, homeowners with fixed incomes are saddled with monthly payments they cannot afford, and inevitably their homes are subject to foreclosure.

The Home Ownership and Equity Protection Act does not affect a single legitimate lender, as indicated by industry testimony during the last Congress in support of the legislation. This year, in testimony before the Subcommittee, Federal Reserve Board Governor Susan Phillips stated, "It is not immediately apparent why this revision is being proposed, however, given the clear anecdotal and other evidence presented to Congress at the time the law was enacted—which showed that the abuses and problems associated with high-cost loans occurred primarily in connection with first-lien refinancings."

We join the Federal Reserve Board in questioning the reason for gutting this Act. It appears to us to be no more than pandering to special interests at the expense of unsuspecting consumers.

B. Truth in Savings Act protections are diminished

The bill repeals important provisions of the Truth in Savings Act ("TISA"), which protect bank customers from misleading, deceptive or incomplete disclosures and advertising relating to their federally insured deposits. As introduced, H.R. 1362 would have repealed nearly the entire Act, which became effective only in 1993, but improvements were made during the Subcommittee and full Committee markups. Because of a Democrat-initiated amendment, significant consumer protections concerning mandatory disclosure of the rates, fees and terms of deposit accounts and any change in those items, was restored. Under the bill, however, TISA's requirement that banks use a uniform method of calculating and disclosing account yields—the annual percentage yield—would be repealed. Without such uniform disclosures, consumers cannot make informed comparisons about banks and bank products.

Additionally, the bull strips TISA of its civil liability provisions. Therefore, if a consumer is misled about the terms of an account, or even if the bank fails to give the consumer the proper interest rate, the consumer is left without recourse against the bank under the Act. Only administrative remedies remain. Administrative remedies alone are insufficient to enforce the Act's provisions and vindicate an individual customer's rights.

C. Consumer privacy breached by information sharing among affiliates

We strongly disagree with the manner in which the bill permits affiliates and subsidiaries of depository institutions to share confidential and sensitive financial information on their customers. Section 142 completely overrides the statutory protections of the Fair Credit Reporting Act ("FCRA") without putting in place any mechanism whereby consumers can ensure the accuracy of the information that is being shared among affiliated companies.

Should H.R. 1062, the Financial Services Modernization Act, be enacted, the scope of this provision will be far reaching. Depository institutions will be permitted to freely share sensitive customer information with their affiliated securities firms, and in some instances, commercial entities and insurance companies. Under section 142, depository institutions could establish affiliated credit bureaus with files on millions of customers to service these companies free of any regulation.

While permitting affiliated companies to share credit information on their customers may be a desired goal, it should be accomplished in the context of reforming the FCRA. This was the approach taken by the Committee in the last Congress. Last year, the Committee, and the full House voted to allow such sharing of information among affiliated companies, without limiting it to depository institutions and their affiliates. In so doing, the Committee also passed important consumer safeguards and strengthened the FCRA. It is time for the Committee to once again demonstrate its resolve to aid consumers by considering and passing much needed reforms to the FCRA.

D. The bill cedes too much authority to the Federal Reserve Board to reduce TILA's coverage

Section 103 of the bill provides the Federal Reserve Board with broad authority to run literally roughshod over the Truth in Lending Act ("TILA"). This section automatically excludes from the law's coverage any transaction that the Board determines by regulation is not needed to carry out the purposes of the Act. The bill further directs the Board to exclude from TILA's coverage any class of transaction that the Board determines does not provide a "measurable benefit to consumers". Far from providing the Board with appropriate regulatory flexibility to interpret the Act, this section amounts to an extraordinary grant of legislative authority to a regulator which could serve to undermine the purposes of the Act.

E. RESPA is balkanized

Amendments made at the Subcommittee and full Committee have mangled the enforcement of the Real Estate Settlement Procedures Act (RESPA). These proposed changes could render this law, which was designed to protect consumers during settlement procedures for a home purchase, useless as a result of the regulatory confusion. The Republican bill will transfer responsibility for all of RESPA from the Department of Housing and Urban Development (HUD) to the Federal Reserve except for Sections 8, 9 and 12. The enforcement aspects of these sections will be balkanized because enforcement will be divided among the financial institutions' regulators and HUD.

The amendments to RESPA would also mandate HUD to use negotiated rulemaking—even on the somewhat contentious rules that are soon to be completed by the Department after over two years of work by this Administration's HUD alone. Requiring HUD to conduct negotiated rulemaking, particularly where affected industries will never agree, will prolong the rulemaking process indefinitely and will only further delay the resolution of issues such as Computerized Loan Originations (CLOs) and Controlled Business Arrangements (CBAs).

Finally, despite being labeled as mere changes to the "purposes" section of RESPA, the amendments will make substantive revisions to RESPA by directing HUD how to specifically regulate settlement services prices or compensation agreements. Numerous Congressional hearings have highlighted egregious practices utilized by some in the mortgage settlement industries. Significant changes were made in this bill to RESPA, without consideration of the ramifications for consumers.

IV. BANK INSURANCE POWERS—WHY ARE WE ROLLING BACK INSURANCE POWERS IN A DEREGULATION BILL?

A number of us are troubled by the inclusion of a provision in a regulatory relief bill that addresses bank insurance powers. We recognize that the approach adopted by the Republicans was an attempt to balance the competing demands of the banking and insurance industries and was done so at the direction of the Republican leadership. However, this is an issue most appropriately addressed in legislation amending the Glass Steagall Act. We must admonish

our Republican colleagues that any attempts to join this regulatory relief bill with the Financial Services Modernization Act of 1995, H.R. 1062, will severely erode any possible bipartisan support that H.R. 1062 might enjoy and will diminish prospects for its v passage.

V. WE STAND FOR RESPONSIBLE REGULATORY AND STATUTORY REFORM

Responding to the need for real regulatory relief, the Committee Democrats crafted a comprehensive substitute bill with provisions that would reduce regulatory burden without sacrificing communities, consumers, or the taxpayer.

The Vento substitute would modernize and streamline numerous banking laws and regulations. This regulatory burden relief proposal will provide for a simplified and improved Real Estate Settlement Practices Act (''RESPA'') and Truth in Lending Act (''TILA''). It also simplifies the TILA disclosures for Adjustable Rate Mortages (''ARMs''). Other provisions clarify confusing disclosures to applicants relating to assignment, sale, or transfer of loan services under RESPA.

The Democratic proposal streamlines the Truth in Savings Act (''TISA'') without compromising its effectiveness. The Vento substitute modifies the civil liability provision to exclude its application to advertisements, and would further require the Federal Reserve Board (FRB) to determine and report to Congress within six months which accounts (if any) are not appropriately served by the calculation of interest under the Annual Percentage Yield (APY) formula.

The Vento substitute allows for a realistic adjustment of the Home Mortgage Disclosure Act (HMDA) exception from reporting for institutions with assets of $10 million or less every five years based on CPI for inflation starting from the beginning of calendar year 1990. It also encourages self-testing by creditors by protecting the results of such self-testing unless it was conducted at an agency's request, the creditor used the results to defend themselves, or the agency received evidence of discrimination independently of the self-testing.

The substitute includes the comprehensive bipartisan provisions providing relief from the ''*Rodash*'' case that destabilize the mortgage banking system, including the secondary market for mortgages. Major provisions of the proposal include the exclusion of certain third party fees imposed by closing agents and intangible taxes from the finance charge; the elimination of the right of rescission for mortgages that are refinanced with a certain lenders only where those loans contain no new cash advances and consolidation of other existing debt; the provision for a higher tolerance for errors in the calculation of the finance charge equal to 1/16 of 1% of the APR, but in no event less than $25 or more than $200; the raising of statutory damages for loans secured by homes from $100 to $1,000, to $250 to $2,500; and, the provision of retroactive relief for lenders against individual claims filed after June 1, 1995 and for class actions certified after January 1, 1995 that relate to misdisclosure of third party fees, errors exceeding the tolerance in section 108, or the use of improper rescission forms.

The substitute streamlines the Bank Holding Company Act by permitting well-capitalized and well-managed BHCs whose banks all have received "satisfactory" CRA ratings to acquire certain other banks without prior approval of the Federal Reserve Board, but rather, through a public notice of 30 days. It further would permit these BHCs to engage in any nonbanking activity (closely related to banking) simply by noticing the Board. The bill further streamlines the bank application process for branches of banks that are well-capitalized, rated a CAMEL 1 and 2, have at least a "satisfactory" CRA rating, and seek to operate in an area that satisfies all applicable geographic limitations with appropriate public notice and comment.

Other streamlining measures would direct the Office of Thrift Supervision (OTS) and the Federal Reserve Board to coordinate and establish a unified examination procedure for dual holding companies and streamline regulatory oversight of such companies by requiring the agencies to coordinate and unify regulatory requirements imposed on dual holding companies consistent.

Importantly, the Vento substitute expands regulatory discretion for examinations from institutions with up to $175 million to institutions with up to $250 million. It also eliminates branch application requirements for automated teller machines (ATMs) and remote service units while it removes the out-dated per-branch capital standard in 12 U.S.C. Section 36(h).

Also included are reductions in overlap in foreign bank applications and requirements that the Federal Reserve Board should rely on examinations of other Federal and State regulators for the examination of foreign banks to the maximum extent practicable. The substitute would amend provisions of the Depository Institutions Management Interlocks Act (DIMIA) to prohibit an outside attorney or accountant of a depository institution from serving as a director of the institution with limited exceptions, while also requiring that a majority of each board be made up of outside directors.

As part of comprehensive, on-going regulatory review the substitute requires the Federal Financial Institutions Examination Council (FFIEC) and each respective federal banking agency represented on the FFIEC, and the National Credit Union Administration (NCUA) Board to identify outdated or otherwise unnecessary regulatory requirements on financial institutions, and eliminate them as appropriate within every 10 year period.

The Vento substitute also includes the bipartisan provisions limiting lender liability for environmental clean-up by clarifying the liability under Federal environmental law for lenders, fiduciaries, and Federal banking and lending agencies and providing certainty as to when and to what extent these parties may have liability for violations under Federal environmental law for their lending, financial and fiduciary activities.

These provisions show that Democratic and Independent Members of the Banking Committee have been listening and do what to respond to the call for true regulatory relief in an bipartisan manner whenever possible. However, this relief should not and does not have to come at the expense of the American consumers, its communities or the taxpayers. Proponents of many of the provisions of the Committee reported regulatory repeal bill have not yet

demonstrated that laws such as the Truth in Savings Act or the Community Reinvestment Act, significantly add to the costs of or are detrimental to financial institutions—especially in light of record bank profits.

For the reasons generally outlined in these views, we will continue to oppose the provisions of H.R. 1858. We will actively seek, however, to further improve this bill or ultimately work for its timely demise.

HENRY GONZALES.
FLOYD H. FLAKE.
JOHN J. LAFALCE.
CLEO FIELDS.
TOM BARRETT.
KWEISI MFUME.
JOE KENNEDY.
MAURICE HINCHEY.
NYDIA VELÁZQUEZ.
LUCILLE ROYBAL-ALLARD.
ALBERT R. WYNN.
BRUCE F. VENTO.
GARY L. ACKERMAN.
CAROLYN B. MALONEY.
LUIS V. GUTIERREZ.
MAXINE WATERS.
PAUL E. KANJORSKI.
CHARLES SCHUMER.
MELVIN L. WATT.
BERNIE SANDERS.

ADDITIONAL VIEWS OF MR. FLAKE

As author of this amendment, I am offering my separate views to be included in the final report in order to clarify any interpretations of my empowerment zone amendment. It is my intention for it to operate independently of section 5136A, and the provisions of section 5136A shall not apply to the powers of National Banks as so conferred under section 5136B.

This new section will provide greater access to insurance in disadvantaged communities where competively priced insurance is inadequate. Moreover, this amendment will foster economic revitalization, such a new business and employment opportunities, in low income neighborhoods by permitting the sale of insurance in empowerment zones. Additionally, by requiring the sale of insurance to occur from a "full-service branch" in the empowerment zone, the amendment provides a significant incentive for banks to improve the quality and quantity of banking services in such communities.

Effective immediately, this amendment allows national banks having main offices or full-service branches in areas eligible for designation as empowerment zones or enterprise communities under section 1392 of the Internal Revenue Code of 1986, or in Indian reservations, to sell insurance from that location. The designation criteria for an empowerment zone or enterprise community assures that the community is one experiencing economic distress.

State laws that regulate conducting the business of insurance, including those that provide operational restrictions protecting consumers, would apply to national banks sale of insurance under this section. However, State laws would not apply if the appropriate Federal banking agency determined, after notice to and comment by the appropriate State officials, that application of a specific State law would have an unreasonably discriminatory effect upon the sale of insurance by banks or their employees in comparison with the effect the application of such state law would have on the sale of insurance by other entities. This provision will ensure that banks selling insurance in a State are subject to the same operational and customer protection standards that apply to other entities selling insurance in the State.

FLOYD H. FLAKE.

ADDITIONAL VIEWS OF MS. WATERS

This legislation contains many objectionable provisions. However, during consideration of the bill in committee, perhaps the most objectionable discussion of the deliberations centered around the bill's proposed changes to the legal standards applied to the Fair Housing Act and Equal Credit Opportunity Act.

Combined with the severe weakening of the Community Reinvestment Act, including changes in its enforceability, and the rollback of several consumer laws, I felt personally offended by the changes which were proposed in the committee print.

The attempt to eliminate disparate impact as a standard for review of discrimination claims brought under the Fair Housing Act and the Equal Credit Opportunity Act—changes which were contained in the committee print of the bill—represented a frontal attack on civil rights law—civil rights laws that people have fought and died for.

Disparate impact is one of three long-standing legal standards (intentional discrimination and disparate treatment are the others) used to challenge discrimination. Disparate impact is used to challenge practices that are neutral in design but when applied has a disproportionate and substantially discriminatory effect on people because of their race, color, religion, sex, familial status, national origin, or handicap. Under this analysis, practices and policies which have a discriminatory effect must be eliminated or changed where they have no business necessity.

This attack on our civil rights laws did not belong in this bill. It did not belong in the Banking Committee. I do not know who was behind it. I do not know whether it was an organized effort on the part of a special interest. I do not know if it was one person's bias. But whatever the source, I, and others on the Banking Committee, were seriously disrespected by the kinds of representations of civil rights laws that were made during the committee deliberations.

Fortunately, the committee had the good sense to strike the most egregious part of the underlying bill which would have exempted an entire class of fair lending and fair housing violations from enforcement. Those disparate impact provisions would have created a loophole for a single industry from the standards Congress and the Federal Courts have determined are necessary to prohibit discrimination.

Despite the removal of these provisions from the bill, I remain troubled that the committee was forced to spend many hours debating an attempt to deny me my rights, my children their rights, and which would have dramatically affected the future of me and my people. I truly hope that as this bill moves forward, we will not see

any recurrence of this effort to undermine longstanding civil rights laws and practices.

MAXINE WATERS.

ADDITIONAL VIEWS OF CONGRESSMAN MAURICE HINCHEY

INCENTIVES FOR SELF-TESTING FOR DISCRIMINATION

As the author of the section 155 provisions providing incentives for institutions to test themselves for lending or housing discrimination, I would like to explain the intent of this section. My substitute language for the original self-testing provisions of the bill was adopted on a voice vote by the Committee, and it reflects a fair and balanced approach to this issue. It is supported by both the Justice Department and Department of Housing and Urban Development, two of the primary enforcement agencies for our fair lending and housing laws.

In order to provide incentives for institutions to self-test for and correct violations of the Fair Housing Act or Equal Credit Opportunity Act, Section 155 prevents evidence of discrimination gathered through a self-test from being used against an institution if the institution is taking appropriate corrective actions for any discrimination that is found.

Testing, as defined by the Supreme Court, refers to the method of using "individuals who, without the intent to rent or purchase . . . pose as renters or purchasers for the purpose of collecting evidence of unlawful . . . practices." *Havens Realty Corp* v. *Coleman*, 455 U.S. 363, 373 (1982) (defining testers in the context of fair housing investigations). In the fair housing and employment context, testing has traditionally been "paired testing"—a process that examines disparate treatment of two individuals that are matched in every respect except for the protected category (e.g. race, gender disability, etc.). Paired testing is a valuable method of obtaining evidence of disparate treatment and I strongly encourage its use by lending institutions to find and correct discriminatory practices.

Although paired testing is the most widely accepted form of testing, I recognize that other testing methods may produce similar and reliable new evidence of unlawful practices and therefore warrant protection under the law. I intended for Federal regulations to address the scope of what additional practices should be accommodated within the definition of the term "self-test."

The principal attribute of self-testing is that it produces new evidence of discrimination against fictitious applicants. Self-testing should be distinguished from compliance reviews, file analysis, the use of second review committees, or other methods that examine existing evidence of discrimination against real applicants. I did not intend for Section 155 to provide protection to apply to such activities.

It is my intent to limit evidentiary protection to those institutions that correct discrimination found through self-testing. Section 155 is not intended to create an evidentiary shield for institutions

that find violations of fair lending or housing laws and fail to take appropriate steps to correct such discrimination.

An institution that discovers discrimination should make all reasonable efforts to determine the extent of the discrimination and its cause including, for example, whether the discrimination is grounded in the institution's policies, the implementation of its policies, employee misconduct, or some other factor. Appropriate action to rectify the cause and effect of discrimination should be taken commensurate with the scope of discrimination. On April 15, 1994, the Interagency Fair Lending Task Force addressed several specific components of "appropriate corrective actions to address the discrimination" found through self-testing. "Policy Statement on Discrimination in Lending." 59 Fed. Reg. 18266, 18270–71 ("Joint Statement").[1] I agree with this analysis and intend that "appropriate corrective actions" under Section 155 be construed in line with the Joint Statement's guidelines.

CREDIT SCORING SYSTEMS

Section 156 amends the Equal Credit Opportunity Act to clarify that credit decisions based solely on an empirically derived, demonstrably and statistically sound credit scoring system, as defined by the Federal Reserve Board in regulations prescribed under this title (12 C.F.R. Pt. 202,"Regulation B"), shall be in compliance with the non-discrimination requirement under ECOA (subsection (a)) as long as the system does not use any category protected under subsection (a), does not use the functional equivalent of such a category, and does not use any criterion that has a discriminatory effect on any such a category unless the use of the criterion is justified by business necessity and there in no less discriminatory alternative available. This provision is consistent with the Federal Reserve Board's current interpretation concerning the use of credit scoring systems for credit decisions.

Credit scoring systems treat all applicants objectively and therefore generally avoid the risk of disparage treatment. There may be instances, however, when individual discretion may be used in conjunction with the use of a credit scoring system and therefore lend opportunity for the disparate treatment of applicants. I firmly believe that it was not the intent of the Committee to shield such treatment from analysis under ECOA. Only those decision made *solely* based on a credit scoring system should be deemed to be in compliance with ECOA under this section.

The Committee accepted, by a vote of 29 to 17, my amendment that clarifies that credit scoring systems are not immune to a discriminatory effect analysis. As the Federal Reserve Board has recognized, the ECOA may prohibit a practice that, although neutral on its face and not intended to discriminate, has a disproportionately negative effect on a prohibited basis if the practice is not justified by business necessity with no less discriminatory alternative

[1] The Task Force is composed of the top officials from each of the ten agencies with responsibilities for fair lending enforcement—the Department of Housing and Urban Development, Office of Federal Enterprise Oversight, Department of Justice, Office of the Comptroller of the Currency, Office of Thrift Supervision, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Federal Housing Finance Board, Federal Trade Commission, and the National Credit Union Administration.

available. *See* Appendix D to Part 202, Section 202.6, 12 C.F.R. Sec 202, Supp. 1 (1995).

DISPARATE IMPACT

By a vote of 32 to 15, the Committee approved my amendment to strike provisions added at Subcommittee that would have limited the use of disparate impact theory in fair housing and lending cases. In doing so, the Committee, on an overwhelming and bipartisan basis, has spoken strongly about preserving a fundamental civil rights protection against policies that have discriminatory effects on applicants, whether or not intent can be proven.

MAURICE HINCHEY.

ADDITIONAL VIEWS OF CONGRESSMAN KENNETH E. BENTSEN, JR.

House Resolution 1858 is a flawed bill. While it could have been a good piece of legislation providing needed regulatory relief, protecting consumer interests, and continuing our commitment to community reinvestment, the final bill failed to do so, For that reason, I could not support the legislation.

I believe the Committee failed to find the appropriate balance between regulatory relief and consumer needs with respect to disclosure and reinvestment. While I support addressing "Rodash," RESPA, lender liability under Superfund, as well as streamlining the financial regulatory process, this bill strayed from its original purpose by going too far in removing consumer safeguards and curtailing the Community Reinvestment Act of 1977 ("CRA").

I agree with the concept of "self-compliance" and "safe harbor" for CRA. Banks that make a good faith effort to invest in the communities from which they receive deposits and reach out to traditionally underserved areas deserve to be rewarded. However, the Committee's approach does not necessarily reward such behavior, but rather it rewards all behavior.

I attempted to amend Sections 123 and 125 which would have raised the rating threshold for self-compliance and safe harbor from "satisfactory" to "high satisfactory." The Committee provision for the lower threshold of a "satisfactory" rating exempted far too many institutions and would reward them for less than satisfactory behavior in some categories. This concept of "high satisfactory" was originally suggested by members of the Board of Governors of the Federal Reserve and discussed in the May 5, 1995 publication of the new rules relating to CRA. A new category would have ensured that banks that truly excel at meeting CRA—and there are many, including many in my hometown of Houston—would be rewarded based upon good performance in all categories of at least "satisfactory." Unfortunately, the Committee chose to reward ninety-five percent of all banks even if they receive a low satisfactory rating on lending and even lower ratings on service and investment. I could not support that, and I believe the Administration will also find it hard to support.

The Committee also chose to change the Truth in Lending Act by limiting disclosure relating to adjustable rate mortgage loans. Under the Committee's bill, a lender would only have to tell a borrower that adjustable rates fluctuate, rather than provide historical data on adjustable rate mortgages. During the last ten years, such rates have fluctuated within a band of 600 basis points and within the last three years a band of 300 basis point. That is considerable volatility to be described only in rhetorical terms.

Every day, sophisticated investors and institutions purchase adjustable rate mortgage instruments in the primary and secondary

markets relying in part on substantial historical data. Yet the Committee believes that individual homebuyers who may not trade in the mortgage market do not need even the simplest and most readily available historical data in order to understand the interest rate risk associated with such floating rate instruments. I completely disagree with that proposition, and I believe this Committee revisit this issue upon learning of the number of consumers who end up with products they did not understand due to a lack of proper disclosure. If its is good for institutional investors, it should be good for individual borrowers.

This bill had the opportunity to be good legislation, but it failed. We made strides toward addressing the banking and insurance question, albeit in a symbiotic way. The Committee came close to engaging in a full-fledged discussion of the proper role for banks in the insurance market. Yet, on the one hand, while we gave banks in certain states more insurance powers, with the other hand we took most of those powers away. After studying this issue over the last six months, I have become convinced that we should consider affiliation. We should try to determine whether affiliation will increase benefits to purchasers of insurance while protecting the professional criteria of insurance brokerage. Consumer protection and professionalism should not be viewed as mutually exclusive in this instance. insurance agents and brokers bring knowledge of both product and rules to the market which benefit the consumer. Finally, as presented to the Committee, the moratorium on the Comptroller of the Currency is unevenly drafted, since it curtails institutions, not powers, thus exacerbating not only the insurance power question, but also creating an uneven playing field among banks.

I support finding ways to eliminate unnecessary and redundant regulations for banks. I have supported legislative efforts to rewrite Glass-Steagall which will make banks more competitive and ensure that consumers can buy new products to meet their financial needs. I believe we must maintain a balance between protecting the consumer and giving banks needed flexibility to adapt to the marketplace. Regulations need to be reasonable and fair-minded. Congress should regularly exercise its prerogative to review regulations and make appropriate change to reflect the changing marketplace.

In fact, I would argue that the financial marketplace is changing faster every day. Through court decisions and state actions, federal regulations are falling behind the marketplace. The financial market is producing new financial products that benefit both consumers and the banks that supply them.

We addressed issues which needed relief, but the Committee went beyond reasonableness and reported a bill which rolls back too much. For that reason, I could not support the bill in its current form.

KENNETH E. BENTSEN, Jr.

APPENDIX

COMMITTEE ON COMMERCE,
Washington, DC, July 17, 1995.

Hon. JAMES A. LEACH,
Chairman, Committee on Banking and Financial Services, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN LEACH: On June 29, 1995, the Committee on Banking and Financial Services ordered reported H.R. 1858, the Financial Institutions Regulatory Relief Act of 1995.

A number of provisions of H.R. 1858 as approved by the Banking Committee fall within the jurisdiction of the Commerce Committee. These include, but are not limited to, provisions amending the Government Securities Act, provisions pertaining to a lender's liability for environmental hazards, provisions affecting the regulation and sale of insurance and affiliation among different service providers, and provisions that may apply to registrants' obligations to provide certain information pursuant to the Securities and Exchange Act of 1934.

I have appreciated your willingness to address my concerns with many of the provisions of H.R. 1858 that fall within the jurisdiction of the Commerce Committee. In view of your desire to move this legislation to the Floor in an expeditious fashion, I do not intend to seek a sequential referral of H.R. 1858. I would appreciate, however, your commitment that the agreements worked out between our staffs will be effected without the need for separate amendments by the Commerce Committee on the House Floor.

Please be advised that my agreement not to seek a sequential referral is based on an understanding that this waiver will be without prejudice to the Commerce Committee's jurisdictional claims over H.R. 1858 and similar bills that may be offered in the future and that the Commerce Committee's jurisdiction will be protected through the appointment of conferees should H.R. 1858 go to conference.

I appreciate your cooperation in these matters and would further appreciate the inclusion of this letter in the Banking Committee's report on H.R. 1858.

Sincerely,

THOMAS J. BLILEY, Jr., *Chairman.*

COMMITTEE ON BANKING AND FINANCIAL SERVICES,
Washington, DC, July 17, 1995.

Hon. THOMAS J. BLILEY, Jr.,
Chairman, House Commerce Committee,
Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of July 17, 1995, regarding a bill reported by the Committee on Banking and Financial Services, H.R. 1858, Financial Institutions Regulatory Relief Act of 1995.

I appreciate the interest that the Committee on Commerce has in this important legislation. As your letter indicates, the Committee could be successful in asserting a right to a sequential referral of H.R. 1858. Therefore, I am most appreciative of your decision not to request such a referral in the interest of accommodating consideration of the bill.

You have my assurance that the agreements worked out by our respective staffs concerning changes to Title III will be included in a manager's amendment as we take the bill to the House floor. You also have my commitment to work together to achieve a mutually satisfactory resolution of the insurance and securities issues within the jurisdiction of the Commerce Committee. In addition, I will also support your Committee's request to seek conferees on these matters within the jurisdiction of the Commerce Committee.

Thank you for your cooperation in this matter and for your support of this legislation.

Sincerely,

JAMES A. LEACH, *Chairman.*

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, July 12, 1995.

Hon. JAMES A. LEACH,
Chairman, Committee on Banking and Financial Services, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for the information that on June 29, 1995, the Committee on Banking and Financial Services ordered reported, H.R. 1858, the Financial Institutions Regulatory Relief Act of 1995. I believe that the Committee on Transportation and Infrastructure clearly has a right to sequential referral of Title III of this bill, relating to liability of lenders and others under various Federal environmental laws.

Title III includes detailed criteria and requirements for liability of lenders, fiduciaries, and Federal agencies under Federal environmental law. The bill expansively defines Federal environmental law to include specific statutes, Federal implementing regulations, and state-delegated laws and regulations. H.R. 1858 also explicitly addresses liability under the Comprehensive Environmental Response, Compensation and Liability Act ("Superfund"), the Oil Pollution Act, and the Clean Water Act.

As you know, the Transportation and Infrastructure Committee has jurisdiction over Superfund, the Oil Production Act and the Clean Water Act. Lender liability under Superfund is of particular interest and concern to the Committee. We are currently working

on a comprehensive bill to reauthorize and reform Superfund—the law that has generated much of the debate over lender liability. This year, we held six hearings on Superfund; much of the testimony focused on lender liability and specifically on the provisions in H.R. 3800, Superfund legislation reported by this Committee last year.

In the interest of accommodating the schedule for consideration of H.R. 1858, I do not intend to request a sequential referral of the bill to the Committee. However, I would appreciate receiving assurances that the agreements worked out between our respective staffs will be effected to our satisfaction without the need for a Floor amendment by this Committee. Meanwhile, my action here is not intended to waive the Committee's jurisdiction over this matter, and should this legislation go to a House-Senate Conference, the Committee on Transportation and Infrastructure will request to be included as conferees on any provisions within this Committee's jurisdiction.

With kind personal regards, I remain

Sincerely,

BUD SHUSTER, *Chairman.*

COMMITTEE ON BANKING AND FINANCIAL SERVICES,
Washington, DC, July 17, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of July 12, 1995, regarding a bill reported by the Committee on Banking and Financial Services, H.R. 1858, the Financial Institutions Regulatory Relief Act of 1995.

I appreciate the interest that the Committee on Transportation and Infrastructure has in this important legislation. I agree that your Committee has a right to sequential referral of Title III of H.R. 1858. Therefore, I am most appreciative of your decision not to request such a referral in the interest of accommodating the schedule for consideration of the bill.

You have my assurance that agreements worked out by our respective staffs will be included in a manager's amendment as we take the bill to the House floor and that I will support your request to be conferees on Title III of the bill.

Thank you for your cooperation in this matter.

Sincerely,

JAMES A. LEACH, *Chairman.*

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